[redacted]

Supreme Court of the United States

OCTOBER TERM, 19[redacted]

No. [redacted]

[redacted]

JOHN HENRY HARMON, III, PETITIONER

v.

WILBER M. BRUCKER, INDIVIDUALLY AND AS SECRETARY OF THE DEPARTMENT OF THE ARMY

On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR CERTIORARI FILED FEBRUARY 14, 1957

CERTIORARI GRANTED MAY 13, 1957

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,230

JOHN HENRY HARMON, III, *Appellant*,

v.

WILBER M. BRUCKER, individually and as Secretary of the Department of the Army, *Appellee*.

Appeal from the United States Court for the District of Columbia

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JOINT APPENDIX

(Filed May 2, 1955)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

C.A. No. 1972-55

JOHN HENRY HARMON, III, 601 East 226th Street, Bronx 66, New York, *Plaintiff*,

against

ROBERT T. STEVENS, individually and as Secretary of the Department of the Army, Washington 25, D. C., *Defendant*.

Complaint

Plaintiff, by his attorneys, complaining of the defendant, alleges that:

1. Plaintiff is a natural born citizen of the United States and is a resident of New York, New York.

2. Defendant Robert T. Stevens, is an individual doing business and residing in the District of Columbia, and is the Secretary of the Department of the Army, United States Government. Said defendant is sued individually and as Secretary of the Department of the Army.

3. Jurisdiction of this Court arises under Sections 11-305 and 11-306 of the District of Columbia Code, under 28 U.S.C., Sections 2201 and 2202, and under 5 U.S.C., Section 1009. Jurisdiction is also based on the First, Fifth and Sixth Amendments to the Constitution of the United States, and on Articles I and III thereof.

4. Plaintiff is a graduate of Bucknell College, having majored in Political Science, and intends to enter law school to prepare for and complete his legal training in order to be admitted to the Bar of the State of New York.

5. On or about the 31st day of October, 1952, plaintiff was duly inducted into the Armed Forces of the United

States Army of the United States, under and pursuant to the provisions of the Universal Military Training and Service Act of 1948, 62 Stat. 604, 50 App. U.S.C., Section 451 *et seq.*

6. On or about February 9, 1954, plaintiff who then held the rank of Private E-1, Service No. U.S. 51 207 184, was notified by the Adjutant General of the Army that by order of defendant plaintiff was to reply to certain derogatory information which had been received concerning him, to wit:

"That you—

"a. In 1951 and 1952, were employed at Camp Lakeland which was reported to be a Communist operated camp.

"b. In 1949, were employed by the Detroit Urban League which was reported to be a subversive organization.

"c. In 1952, registered to vote in New York City with the American Labor Party. The American Labor Party is cited by the House Committee on Un-American Activities as being under Communist control in New York City.

"d. Solicited contributions of money for the defense of persons under indictment for violation of the Smith Act.

"e. Have a father, John, who:

(1) Was reported to be a member of the Communist Party.

(2) Was a member of the Negro Labor Victory Committee which is cited as subversive and Communist by the Attorney General of the United States.

"(3) Was an official for the International Workers Order which is cited as subversive and Communist by the Attorney General of the United States.

(4) In 1946, was a delegate to the 10th National Negro Congress, an organization cited as subervise and Communist by the Attorney General of the United States.

(5) In 1943, was an instructor at the George Washington Carver School which is cited as an adjunct of the Communist Party by the Attorney General of the United States.

(6) In 1938, 1940, 1941, 1943-1947, 1949-1952, registered in New York City with the American Labor Party.

"f. Have a stepmother, Susie, who from 1943 to 1952, registered in New York City with the American Labor Party.

"g Associated wiht persons who were Communists or Communists sympathizers."

7. On or about March 11, 1954, plaintiff replied as follows:

"Alleg: a) Employment at Camp Lakeland, summers of 1951-52.

Ans: a) To the best of my knowledge, Camp Lakeland caters to lower-incoming working class people. At the time of my employment there, Camp Lakeland was primarily patronized by Jewish people. However, the camp's management actively encouraged the patronage of all working class peoples, Negroes included. It is quite reasonable to assume that any person or groups of persons hostile to the idea of inter-group relations, would attempt to detract from the camp's efforts by labelling it as communist dominated.

I was employed at Camp Lakeland in 1951 as a kitchen-helper, and in 1952 as ass't breakfast cook.

"(Alleg: b) Employment by the Detroit Urban League in summer of 1949.

Ans: b) I was employed by the Detroit Urban League in the summer of 1949 to act as a counselor in its Green Pastures Camp for under-privileged Negro boys and girls. A thorough check into my financial standing while an undergraduate student at Bucknell Uni-

4

versity, would readily reveal that I was in continual financial difficulty. Consequently, I was willing to accept the quickest and most reasonable employment available during my summer vacations. However, the National Urban League or its Detroit branch has never been known by me to have been a subversive organization. Reports to the effect that it is subversive, could only be construed by myself and certainly by Negroes all over the United States, as an outright attack upon the efforts of the Negro people to better their condition in this country, with subsequent hope that a democratic pattern of activity might be established for colored peoples all over the world in their efforts toward self and group betterment.

"Alleg: c) American Labor Party registration in 1952.

Ans: c) To the best of my knowledge, the American Labor Party is a legally recognized political organization in the state of New York. The right to vote for the Party of one's choice has from the beginning of American political maturity, been a most precious and cherished democratic tenet. Notwithstanding the reports of the House Un-American Activities Committee, I shall as a democratic and loyal American continue to vote for any legally recognized political party of my own choosing.

"Alleg: c) Solicitation of funds for persons under indictment under the Smith Act.

Ans: c) That I knowingly solicited funds for persons under indictment under the Smith Act, I do not deny. I do however, contend both as a firm believer in the fullest exercise of all rights embodied in the constitution of the United States, and as a student of Political Science, that a person is innocent until proven guilty, and that the reverse is not so. Therefore, I consider my actions in this matter as nothing more than the exercise of a constitutional prerogative. I can rely on public records to show that many leading legal authorities in this country, and even members of the United States Supreme Court, have not been

convinced of the legality or constitutionality of the Smith Act.

"Alleg: e & f) Allegations concerning my father John, and my stepmother Susie Harmon.

"Ans: e & f) It is with deepest moral indignity coupled with a devout sense of filial piety, that I refuse to answer the derogatory statements made under allegations e and f. As neither my father nor stepmother are employed in any capacity by the federal government, I am led to the conclusion that derogatory information concerning them is wholly irrelevant to the case at hand.

"Alleg: g) Knowing or acquaintance with communists or Communist sympathizers.

Ans: g) I am not nor have I ever been a member of the Communist Party of the United States. As a rather talented public speaker, I have appeared before many groups and audiences from childhood onward. It is quite possible that I have known or been acquainted with Communists or their sympathizers. I do not however, hold with the 'guilt by association' gimmick employed by some persons or groups of persons in our present day society. If the above gimmick is to be considered a legal procedure for the impugning of one person's character, how then can our government's relations with the regime of General Tito's Yugoslavia be justified, when such an association must surely reflect in one manner or another upon a nation's character?"

8. On or about April 2, 1954, the Adjutant General, by order of defendant, informed plaintiff's Commanding Officer that a discharge of plaintiff as disloyal or subversive under the provisions of Army Regulation 615-370 had not been favorably considered, but that plaintiff would be assigned to non-sensitive duty in the lowest pay grade and on or about April 2, 1954, the Adjutant General, by order of the defendant, notified plaintiff as follows:

"1. Reference is made to letter from this office dated 9 February 1954.

"2. The allegations in your case and your reply thereto have been reviewed in the Department of the Army. It has been determined that you will be retained in the service in your present grade, that you will not be promoted and that upon completion of your term of service you will be discharged with a type of discharge appropriate to the character of service you have rendered as of the date you are eligible for separation.

"By Order of the Secretary of the Army:

9. On or about the 26th day of May, 1954, the Adjutant General, by order of defendant, rescinded the provisions of the order dated April 2, 1954 as aforesaid, and informed plaintiff's Commanding Officer that by order of defendant, plaintiff would be discharged under the provisions of Army Regulation 615-370, and given an "Undesirable Discharge."

10. On or about the 2nd day of June, 1954, plaintiff was separated from the Army of the United States under the provisions of Army Regulation 615-370, at Transfer Point Camp Pickett, Virginia, with an "Undesirable Discharge." A photostatic copy of plaintiff's discharge certificate (DD Form 258A) is annexed hereto and made a part hereof as plaintiff's Exhibit 1); a photostatic copy of plaintiff's report of separation from the Armed Forces of the United States (DD Form 214) is annexed hereto and made a part hereof as Plaintiff's Exhibit 2).

11. The allegations in the letter of the Adjutant General, dated February 9, 1954, as aforesaid, relate solely to lawful and legal activities and associations which plaintiff carried on as part of his civilian life prior to the time of his induction into the Army of the United States on or about October 31, 1952, except that in November, 1952, plaintiff wrote a letter to two friends suggest-

ing that they make a financial contribution to assist the defense of two individuals who had been indicted in Detroit, Michigan for violation of the Smith Act, the Act of June 28, 1940. c. 439, Section 2, 54 Stat. 670, 18 U.S.C., Section 2385.

12. The action of defendant on or about May 26, 1954, ordering plaintiff discharged from the Army of the United States with an "Undesirable" Discharge and plaintiff's discharge from the Army of the United States on June 2, 1954, with an "Undesirable" Discharge, was arbitrary, capricious and in violation of the Act of June 4, 1920, c. 227 Subchapter II, Section 1, 41 Stat. 808, as amended July 26, 1947, c. 343, Title II, Section 205(a), 61 Stat. 501, May 5, 1950, c. 169, Section 6(b), 64 Stat. 145, 10 U.S.C., Section 652(a), and Army Regulation No. 615-375 established thereunder.

13. By reason of said "Undesirable" Discharge, plaintiff has been and will continue to be deprived of substantial monetary benefits and rights as a veteran under both Federal and State legislation, and plaintiff has encountered and will continue to encounter substantial prejudice in civilian life in situations where the type of service rendered in the Armed Forces of the United States, or the character of discharge received therefrom, has any bearing.

8 14. The action of defendant hereinbefore alleged has deprived plaintiff of liberty and property without due process of law, and has branded plaintiff disloyal to his Country, arbitrarily and without basis in fact, and without a fair procedure or any hearing whatever.

15. The action of defendant hereinbefore alleged was taken without an adequate standard of loyalty, disloyalty or subversion; without sufficiently definite statement of charges or allegations of fact; without any hearing whatever; without evidence of disloyality without confrontation and cross-examination of witnesses; on the basis of undisclosed information which plaintiff had no opportunity to refute, and without a statement of the reasons plaintiff

was declared disloyal and/or subversive and discharged as "Undesirable." The imposition of the punishment of an "Undesirable" Discharge without a judicial trial or an administrative hearing constitutes a violation of the prohibition against bills of attainer and ex post facto laws by punishing plaintiff through a determination that his services to the Army of the United States were undesirable and that plaintiff was disloyal and/or subversive.

16. The action of defendant was based solely on allegations of plaintiff's lawful political opinions, affiliations and associations which were the subject of the letter of the Adjutant General, dated February 9, 1954, as aforesaid, and thus violated the right of freedom of speech, opinion and association. The Defendant's action constituted an exercise of judicial authority and power not in accordance with established principles of due process of law and was in violation of Article III of the Constitution.

9 17. The character and efficiency of plaintiff's service in the Army of the United States from October 31, 1952 until the receipt of his "Undesirable" Discharge on June 2, 1954 was "excellent," and plaintiff's service record bears two character and efficiency recommendations; the first, for the period November 14, 1952 to July 28, 1953, is marked "excellent" as to character and efficiency; the second, for the period August 2, 1953 to April 24, 1954, is marked "excellent" as to character and efficiency.

18. Plaintiff is not now and never has been, a member of the Communist Party, or of any Communist cell or unit, or of any Communist organization, or of any organization that advocated the overthrow of the Government, or of any organization which advocated a policy of approving or advocating the commission of acts of force or violence to deny other persons their rights under the Constitution, or of any organization which seeks to alter the form of government of the United States by un-Constitutional means, or of any organization which, to his knowledge, has engaged in subversive activities of any kind or nature.

19. Plaintiff is, and has always been, completely and unswervingly loyal to the Government of the United States and would not hesitate to lay down his life in defense of the United States against any and all of its enemies whomsoever.

20. On or about the 8th day of June, 1954, plaintiff made an application to the Army Discharge Review Board to have the nature of his discharge changed from "Undesirable" to "Honorable," and on the 22nd day of October, 1954, plaintiff appeared before said Board in Washington, D. C., but on or about the 15th day of November, 1954 plaintiff, was informed that his application for a change of his discharge from "Undesirable" to "Honorable" had been denied.

21. On or about the 1st day of December, 1954, plaintiff applied to the Army Board for the Correction of Military Records to have his discharge changed from "Undesirable" to "Honorable," but on or about the 27th day of January, 1955, plaintiff was advised that his application has been denied.

22. On or about the 1st day of February, 1955, plaintiff requested defendant to change his discharge from "Undesirable" to "Honorable," but to date defendant has failed and refused, and continues to fail and refuse to do so.

23. There exists between plaintiff and defendant herein, an actual controversy, and plaintiff has instituted this action for the purpose, among others, of having the aforesaid action of defendant in discharging plaintiff from the Army of the United States with an "Undesirable" Discharge on June 2, 1954, declared null, void, illegal, and in violation of the Act of June 4, 1920, c. 227, Subchapter II, Section 1, 41 Stat. 809, as amended July 26, 1947, c. 343, Title II, Section 205(a), 61 Stat. 501, May 5, 1950, c. 169, Section 6(b), 64 Stat. 145, and Army Regulation No. 615-375 established thereunder; in violation of the FIRST, FIFTH and SIXTH Amendments of the Constitution of the United

States, and further in violation of Articles I and III of the Constitution of the United States.

24. Plaintiff has exhausted all of the remedies available to him under applicable administrative procedures and has no adequate remedy at law, other than the instant action, under the jurisdiction conferred by this Court.

25. By reason of the premises plaintiff is entitled to relief against defendant under the Federal Declaratory Judgment Act of June 14, 1934, 28 U.S.C., Sections 2201 and 2202.

26. That no prior application for this or any other relief has been made to this or any other court,

WHEREFORE, plaintiff prays for the following:

1. That the action of defendant in discharging plaintiff from the Army of the United States with an "Undesirable" Discharge on June 2, 1954, be declared to be null, void, illegal, and in violation of the FIRST, FIFTH and SIXTH Amendments to the United States Constitution; in violation of Articles I and III of the United States Constitution, in violation of the Act of June 4, 1920, c. 227, Subchapter II, Section 1, 41 Stat. 809, as amended July 26, 1947, c. 343, Title II, Section 205(a), 61 Stat. 501, May 5, 1950, c. 169, Section 6(b), 64 Stat. 145, and Army Regulation No. 615-375 established thereunder;

2. That plaintiff's discharge from the Army of the United States on June 2, 1954, be ordered changed from "Undesirable" to "Honorable" as of June 2, 1954; and

3. For such other and further relief as to this court may seem just and proper in the premises.

DICKSTEIN, SHAPIRO & FRIEDMAN
350 Fifth Avenue,
New York 1, New York

By: DAVID I. SHAPIRO
David I. Shapiro, a member of the firm.

HELEN M. ROSENTHAL
Helen M. Rosenthal
918 Colorado Building
Washington 5, D. C.
Attorneys for Plaintiff

Note

Pages 13 and 14
are on Card 2

18 Filed July 19, 1955

Answer

Defendant answers the complaint as follows:

1. Defendant admits the allegations of paragraph 1 of the complaint.

2. Defendant admits the allegations of paragraph 2 of the complaint.

3. Defendant denies the allegations of paragraph 3 of the complaint.

4. For lack of knowledge and information sufficient to form a belief, defendant denies the allegations of paragraph 4 of the complaint.

5. Defendant admits the allegations of paragraph 5 of the complaint.

6. Defendant admits the allegations of paragraph 6 of the complaint.

7. Defendant admits the allegations of paragraph 7 of the complaint.

8. Defendant admits the allegations of paragraph 8 of the complaint.

9. Defendant admits the allegations of paragraph 9 of the complaint.

19 10. Defendant admits the allegations of paragraph 10 of the complaint.

11. Defendant denies the allegations of paragraph 11 of the complaint.

12. Defendant denies the allegations of paragraph 12 of the complaint.

13. Defendant denies the allegation of paragraph 13 of the complaint that "By reason of said 'Undesirable' Discharge, plaintiff has been and will continue to be de-

prived of substantial monetary benefits and rights as a veteran under both Federal and State legislation." For lack of knowledge and information sufficient to form a belief, defendant denies the remaining allegations of paragraph 13 of the complaint.

14. Defendant denies the allegations of paragraph 14 of the complaint.

15. Defendant admits that his action was taken without any hearing, without any confrontation and cross examination of witnesses by plaintiff, and without "a statement of the reasons plaintiff was declared disloyal and/or subversive and discharged as "Undesirable," except that the report of plaintiff's separation from the Armed Forces (Exhibit 2 to the Complaint) stated as the reason and authority for separation Army Regulations 615-370.

Except as herein admitted, defendant denies the allegations of paragraph 15 of the complaint.

16. Defendant denies the allegations of paragraph 16 of the complaint.

17. Defendant admits the allegations of paragraph 17 of the complaint.

18. For lack of knowledge and information sufficient to form a belief, defendant denies the allegations of paragraph 18 of the complaint.

19. For lack of knowledge and information sufficient to form a belief, defendant denies the allegations of paragraph 19 of the complaint.

20. Defendant admits the allegations of paragraph 20 of the complaint.

21. Defendant admits the allegations of paragraph 21 of the complaint.

22. Defendant admits the allegations of paragraph 22 of the complaint.

23. Defendant denies the allegations of paragraph 23 of the complaint.

24. Defendant admits the allegations of paragraph 24 of the complaint.

25. Defendant denies the allegations of paragraph 25 of the complaint.

26. Defendant admits the allegations of paragraph 26 of the complaint.

ADDITIONAL DEFENSES

1. This Court has no jurisdiction over the subject matter of the complaint.

2. The complaint fails to state a claim upon which any relief can be granted.

/s/ JOSEPH D. GUILFOYLE
Acting Assistant Attorney General
/s/ EDWARD H. HICKEY
Attorney, Department of Justice
/s/ DONALD B. MACGUINEAS
Attorney, Department of Justice
Counsel for defendant

Filed August 25, 1955

Plaintiff's Motion for Summary Judgment

Pursuant to Rule 56(a) of the Federal Rules of Civil Practice, plaintiff moves this Court to enter summary judgment in favor of the plaintiff herein on the ground that plaintiff is entitled to judgment as a matter of law.

As ground for the motion, plaintiff states that it appears clearly from the Complaint and Answer and the affidavit

of plaintiff hereto annexed that defendant's action in discharging plaintiff from the Army of the United States with an "Undesirable Discharge" under the provisions of Army Regulation No. 615-370 as "disloyal or subversive" was arbitrary, capricious and in violation of 10 U.S.C. Section 652(a) and Army Regulation No. 615-375 established thereunder, and was further in violation of the First, Fifth and Sixth Amendments to the United States Constitution and Article 3, Section 3, Clause 1 thereof.

In support of this motion, the Court is respectfully
23 referred to the pleadings and exhibits on file and the annexed affidavit of plaintiff, together with the attached Memorandum of Points and Authorities in support of plaintiff's motion for summary judgment.

/s/ JAMES H. HELLER
1026 Woodward Building
Washington 6, D. C.

DAVID I. SHAPIRO
David I. Shapiro
350 Fifth Avenue
New York 1, New York

Attorneys for Plaintiff

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24 **Affidavit Submitted in Support of Motion for Summary Judgment Under Rule 56(a) of the Federal Rules of Civil Procedure**

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

JOHN HENRY HARMON, III, being duly sworn, deposes and says:

I am the plaintiff in the above-captioned action and submit this affidavit in support of my motion for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure.

The following facts are undisputed or admitted:

On or about the 31st day of October, 1952, your deponent, a resident of the City and State of New York, was duly inducted into the Armed Forces of the United States (Army), under and pursuant to the provisions of the Universal Military Training and Service Act of 1948, 62 Stat. 604, 50 App. U.S.C., Section 451 et seq.

Thereafter and on or about February 9, 1954, your deponent, who then held the rank of Private E-1, Service No. U. S. 51 207 184, was notified by the Adjutant General of the Army that by order of defendant I was to reply to certain derogatory information which had been received concerning me, and which is specifically set out in paragraph numbered "6" of the complaint.

On or about March 11, 1954, I replied to said allegations. My reply is set out in paragraph numbered "7" of the complaint.

Subsequently, and on or about April 2, 1955, the Adjutant General, by Order of the Secretary of the Army, informed my Commanding Officer that my discharge as disloyal or subversive under the provisions of Army Regulation 615-370 had not been favorably considered. Instead, I was to be assigned to non-sensitive duty in the lowest pay grade and retained in the Army.

At the same time, I was personally informed by the Adjutant General as follows:

"1. Reference is made to letter from this office dated 9 February, 1954.

"2. The allegations in your case and your reply thereto have been reviewed in the Department of the Army. It has been determined that you will be retained in the service in your present grade, that you will not be promoted and that upon completion of your term of service and you will be discharged with a type of discharge

appropriate to the character of service you have rendered as of the date you are eligible for separation.

"By Order of the Secretary of the Army."

However, fifty-five days later and on or about May 26, 1954, without notice to me or providing me with a hearing, the Adjutant General, by Order of the Secretary of the Army, rescinded the provisions of the previous order and informed my Commanding Officer that I would be discharged under the provisions of Army Regulation No. 615-370 and given an "Undesirable Discharge."

On or about the 2nd day of June, 1954, I was separated from the Army of the United States under the provisions of Army Regulation No. 615-370, at Transfer Point Camp Pickett, Virginia, with an "Undesirable Discharge." A photostatic copy of my discharge certificate is annexed to the Complaint as "Plaintiff's Exhibit 1"; a photostatic copy of my report of separation from the Armed Forces of the United States is annexed to the Complaint as "Plaintiff's Exhibit 2."

It is admitted by defendant that the character and efficiency of my service in the Army of the United States from October 31, 1952 until the receipt of my "Undesirable Discharge" on June 2, 1954, was "excellent" and that my service record bears two character and efficiency recommendations for excellent service.

On or about the 8th day of June, 1954, approximately six days subsequent to the receipt of my undesirable dis-
27 charge, I made an application to the Army Discharge Review Board to have the nature of my discharge changed from "Undesirable" to "Honorable." However, on or about the 15th day of November, 1954, I was informed that my application was denied.

Thereafter, and on or about the 1st day of December, 1954, I applied to the Army Board for the Correction of Military Records to have the nature of my discharge

changed from "Und sirable" to "Honorable," but on or about the 27th day of January, 1955, I was advised that my application had been denied.

On or about the 1st day of February, 1955, I requested the Secretary of the Army to change the nature of my discharge from "Undesirable" to "Honorable," but to date he has failed and refused and continues to fail and refuse to do so. It is admitted by defendant that I have exhausted all of the remedies available to me under applicable administrative regulations and that I have no adequate remedy at law other than the instant action, under the jurisdiction conferred by this Court.

Controverted Allegations

It should be noted that in paragraph numbered "13" of the Complaint it is alleged that:

"By reason of said "Undesirable" Discharge, plaintiff has been and will continue to be deprived of substantial monetary benefits and rights as a veteran under both Federal and State legislation, and plaintiff has encountered and will continue to encounter substantial prejudice in civilian life in situations where the type of service rendered in the Armed Forces of the United States, or the character of discharge received therefrom, has any bearing."

Defendant has denied this allegation in paragraph numbered "13" of his Answer, which reads:

"Defendant denies the allegation of paragraph 13 of the complaint that 'By reason of said "Undesirable" discharge, plaintiff has been and will continue to be deprived of substantial monetary benefits and rights as a veteran under both Federal and State legislation.' For lack of knowledge and information sufficient to form a belief, defendant denies the remaining allegations of paragraph 13 of the complaint."

This Court will readily see that as a result of my "Undesirable" discharge, I have, as a matter of law, been specifically deprived of the following substantial monetary benefits and rights as a veteran both under Federal and State legislation:

1. A Federal Civil Service priority (5 U.S.C., Section 851);

2. A New York State Civil Service priority (New York Civil Service Law, Section 21);

3. "Mustering-out" pay of $200.00 (38 U.S.C., Section 691(a) as amended);

4. A veteran's education scholarship provided by the State of New York (New York Education Law, Section 608);

5. Many other benefits provided by the laws of the State of New York for veterans who have been discharged from the Armed Forces of the United States under "Honorable" conditions. (See e.g., N.Y. Soc. Wel. Law, Sect. 168; New York General Municipal Law, Sect. 148; New York General Business Law, Sect. 32.)

Moreover, under the provisions of SR-600-220-1, 29 effective June 18, 1954, the Army provides individuals who accept a discharge under the regulation with a "form letter" (SR 600-200-1; Par. 29(C)(2)) which reas as follows:

"I hereby accept discharge as directed by the Army Review Board under the provisions of SR 600-200-1. I understand that said discharge may be undesirable. I further understand that my separation from the Army effected by undesirable discharge will be under conditions other than Honorable; that I may be deprived of my rights as a veteran under both Federal and State legislation and may encounter substantial prejudice in civilian life in situations where the type of service rendered in any branch of

the Armed Forces of the character of discharge received therefrom may have a bearing."

Consequently, it is clear as a matter of law that I have been deprived of substantial monetary benefits and rights as a veteran both under Federal and State legislation by virtue of said "Undesirable Discharge," and that defendant's denial fails to raise an issue of fact with respect to the matters controverted by paragraph numbered "13" of his Answer.

In addition, I respectfully direct the Court's attention to paragraphs numbered "18" and "19" of the Complaint, wherein it is alleged that:

"18. Plaintiff is not now and never has been, a member of the Communist Party, or of any Communist cell or unit, or of any Communist organization, or of any organization that advocated the overthrow of the Government, or of any organization which advocated a policy of approving or advocating the commission of acts of force or violence to deny other persons their rights under the Constitution, or of any organization which seeks to alter the form of government of the United States by unConstitutional means, or of any organization which, to his knowledge, has engaged in subversive activities of any kind or nature."

"19. Plaintiff is, and has always been, completely and unswervingly loyal to the Government of the United States and would not hesitate to lay down his life in defense of the United States against any and all of its enemies whomsoever."

I respectfully request the Court to note that in his Answer, defendant controverted these allegations as follows:

Answer, Par. "18. For lack of knowledge and information sufficient to form a belief, defendant denies the allegations of paragraph 18 of the complaint."

Answer, Par. "19. For lack of knowledge and information sufficient to form a belief, defendant denies the allegations of paragraph 19 of the complaint."

I believe that this Court will find it difficult to conceive how defendant could have pleaded a "lack of knowledge and information sufficient to form a belief" as to the allegations contained in paragraphs numbered "18" and "19" of the Complaint when defendant ordered me discharged from the Army of the United States with an "Undesirable Discharge" under the provisions of Army Regulation No. 615-370.

Army Regulation No. 615-370 provides in Paragraph 4(B)(L)(a) thereof that the Secretary of the Army will direct a discharge of military personnel below the
31 grade of Warrant Officer, Junior Grade during peacetime, as follows:

"Direct undesirable discharge of individuals who have been determined by investigation to be disloyal or subversive, but in whose cases trial by court martial is deemed not feasible or warranted."

In short, I was discharged from the Army with in "Undesirable Discharge" because it had been determined by investigation that I was "disloyal" or "subversive." However, when I alleged in my complaint that I am neither "disloyal" nor "subversive," the Secretary of the Army denies these allegations on the ground that he has a "lack of knowledge and information sufficient to form a belief" as to such matters. It is clear that if defendant had a lack of knowledge and information sufficient to form a belief as to whether I was "disloyal" or "subversive," my undesirable discharge under the provisions of Army Regulation 615-370 was patently arbitrary.

Consequently, and as a matter of law, either defendant's answer fails to raise an issue of fact with respect to the paragraphs numbered "18" and "19" of his Answer, being

deemed admitted for the purposes of this motion, or my "Undesirable Discharge" as "disloyal or subversive" was patently arbitrary.

Further Admissions

In paragraph numbered "15" of defendant's answer, defendant admits that my "Undesirable Discharge" was effected as follows:

"15. Defendant admits that his action was taken without any hearing, without any confrontation and cross examination of witnesses by plaintiff, and without 'a statement of the reasons plaintiff was declared as "Undesirable,"' except that the report of plaintiff's separation from the Armed Forces (Exhibit 2 to the Complaint) stated as the reasons and authority for separation Army Regulations 615-370."

Conclusion

Upon the pleadings, the admissions contained in defendant's answer, and the facts set forth herein, your deponent respectfully submits that the action of the Secretary of the Army which resulted in my discharge from the Army of the United States with an "Undesirable Discharge" be declared invalid for the following reasons:

1. The action of defendant on or about May 26, 1954, ordering me discharged from the Army of the United States with an "Undesirable Discharge," and my discharge from the Army of the United States on June 2, 1954, with an "Undesirable Discharge," was arbitrary, capricious and in violation of 10 U.S.C., Section 652(a), and Army Regulation No. 615-375 established thereunder.

2. The action of defendant has deprived me of liberty and property without due process of law, and has branded me disloyal to my country, arbitrarily and without basis in fact, and without a fair procedure or hearing.

3. The action of defendant was taken without any adequate standard of loyalty, disloyality or subversiveness; without any hearing whatever; without confrontation and cross examination of witnesses; and without the statement of the reasons why I was declared disloyal and/or
33 subversive and discharged as "Undesirable;" the imposition of the punishment of an "Undesirable Discharge" without a judicial trial or an administrative hearing constitutes a violation of the prohibition against bills of attainder by punishing me through a determination that my services to the Army of the United States were undesirable and that I was disloyal and/or subversive.

4. Army Regulation No. 615-370 on which the action of defendant was based was un-Constitutional on its face and in violation of Article III, Section 3, Clause 1 of the Constitution and the First, Fifth and Sixth Amendments thereof.

For the foregoing reasons, your deponent believes he is entitled to summary judgment for the relief demanded in the Complaint, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure.

JOHN HENRY HARMON, III
John Henry Harmon, III

Sworn to before me this 19th day of August, 1955.

DAVID ISRAEL SHAPIRO

Notary Public in the State of New York
Qualified in New York County
No. 31-8937325
Filed in Kings and N. Y. Co.
Term Expires March 30, 1956

81 Filed September 8, 1955

Supplemental Complaint

1. On July 21, 1955, subsequent to the filing of the original complaint herein, Robert T. Stevens, named as defendant in that complaint, resigned as Secretary of the Army and defendant Wilber M. Brucker took office as his successor. Since that date, said Wilber M. Brucker has adopted and continued the actions of said Robert T. Stevens complained of in the original complaint and has failed or refused to change plaintiff's military service discharge from "Undesirable" to "Honorable."

WHEREFORE, plaintiff prays that the relief requested in his original complaint be granted against and as to defendant Wilber M. Brucker.

DICKSTEIN, SHAPIRO & FRIEDMAN
350 Fifth Avenue
New York 1, New York

By: DAVID I. SHAPIRO
David I. Shapiro
JAMES H. HELLER
James H. Heller
1026 Woodward Building
Washington 5, D. C.
Attorneys for Plaintiff

82 VERIFICATION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

JOHN HENRY HARMON, III, being duly sworn upon his oath, says that he is the plaintiff in this action, that he has read the foregoing Supplemental Complaint and that the

factual allegations contained therein are true to his own knowledge.

JOHN HENRY HARMON, III
John Henry Harmon, III

Subscribed and sworn to before me this
6th day of September, 1955.

HAROLD FRIEDMAN
Notary Public
Notary Pubile, State of New York
Qualified in Queens County
No. 41-6412025
Term Expires March 30, 1956

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91 Filed November 15, 1955

Motion by Defendant for Summary Judgment

Defendant moves the Court for summary judgment on the grounds that there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law.

In support of this motion the Court is respectfully referred to the affivadits attached to and made a part of this motion, and to defendant's accompany memorandum of points and authorities in support of this motion and in opposition to plaintiff's motion for summary judgment.

/s/ WARREN E. BURGER
Assistant Attorney General
/s/ EDWARD H. HICKEY
/s/ DONALD B. MACQUINEAS
/s/ HOWARD E. SHAPIRO
Department of Justice
Attorneys for defendants

98 **Affidavit in Support of Defendant's Motion for Summary Judgment**

Department of Army, The Pentagon, Washington 25, D. C.
ss: (Place where sworn)

Edward Duvall, Colonel, Judge Advocate General Corps, United States Army, being duly sworn, deposes and says:

I am Recorder and Custodian of Records of the Department of the Army Review Board, an administrative board which succeeded to the functions of the Army Personnel Board, Office of the Assistant Chief of Staff, G-1, Personnel, United States Army, in cases arising under the military personnel security program. In this capacity I am custodian of records prepared by the Army Personnel Board in the matter of former Private John Henry Harmon III, U.S. 51 207 184. From an examination of these records I have ascertained that on 29 March 1954 the Army Personnel Board recommended to the Assistant Chief of Staff, G-1, Personnel, that Private Harmon, who had been investigated as a possible security risk, be retained in the service in the lowest enlisted grade assigned to non-sensitive duties. This recommendation was based upon Paragraph 4d, Army Regulation 615-370 dated 6 December 1950 which provides:

99 4. Policy

* * * * * * * * * *

d. Retention in service.—During national emergency, war, or mobilization, direct retention in service, under continuing surveillance, of individuals in whose cases circumstances and facts disclosed during the investigation provide insufficient evidence or disloyalty or subversion, but sufficient evidence to render the individuals security risks.

EDWARD DUVALL

Edward Duvall, *Colonel, JAGC*
Recorder and Custodian of Records, Department of the Army Review Board.

Subscribed and sworn to before me, Cecil L. Forinash, Lieutenant Colonel, JAGC;

This 28th day of September 1955.

CECIL L. FORINASH.
Cecil L. Forinash, *Lt. Colonel; JAGC* Authorized to administer oaths under Article 136 (a)(1), Uniform Code of Military Justice, 64 Stat. 143 (1950), 50 U.S.C. 736.

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100 **Affidavit in Support of Defendant's Motion for Summary Judgment**

Department of the Army
ss: The Pentagon
Washington 25, D. C.

Clair H. Thurston, Lieutenant Colonel, General Staff, United States Army, being duly sworn, deposes and says:

1. I am an officer assigned to duty in the Personnel Actions Branch, Office of the Assistant Chief of Staff, G-1, United States Army. On or about 16 April 1954 I forwarded the record in the matter of Private John Henry Harmon, III, U.S. 51 207 184 to the Army Personnel Board, Office of the Assistant Chief, G-1, Personnel, for reconsideration in the light of Department of Defense Directive 5210.9 dated April 7, 1954, a copy of which is attached to and made a part of this affidavit. I had received the record in Private Harmon's case from the Adjutant General, United States Army, who had requested that the Army Personnel Board reconsider Private Harmon's status in the Army under the aforementioned directive, in compliance with Paragraph One, Memorandum from the Secretary of Defense for the Secretaries of the Military Departments dated April 7, 1954, which required that a review be made of all security cases which had

been closed prior to the issuance of Department of Defense Directive 5210.9. A copy of this memorandum is attached to and made a part of this affidavit.

101 2. It is personally known to me that the Assistant Chief of Staff, G-1, Personnel, United States Army on May 25, 1954 approved and dispatched to the Adjutant General, United States Army, the recommendation of the Army Personnel Board under the criteria of Department of Defense Directive 5210.9 that Private Harmon's further retention in the service was inconsistent with the interests of national security and that he should therefore be discharged with an Undesirable Discharge.

C. H. THURSTON
Clair H. Thurston, *Lieutenant Colonel*, GS Personnel Actions Branch, Office of the Assistant Chief of Staff, G-1, Personnel United States Army

Subscribed and sworn to before me Cecil L. Forinash, Lieutenant Colonel, JAGC, on this 29th day of September, 1955.

CECIL L. FORINASH
Cecil L. Forinash, *Lieutenant Colonel, JAGC* Authorized to administer oaths under Article 136(a)(1), Uniform Code of Military Justice, 64 Stat. 143 (1950), 50 U.S.C. 736.

102 April 7, 1954

MEMORANDUM FOR:

The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force

REFERENCE:

(a) Department of Defense Directive No. 5210.9, 7 April 1954, subject: "Military Personnel Security Program".

1. It is directed that a review be made of all cases which have been cleared prior to the issuance of reference (a) in each of the Military Departments, including officers, warrant officers, and enlisted personnel, both members of the regular armed services and the reserves. The Assistant Secretary of each Military Department in charge of manpower and personnel should be charged with personal supervision of this review. The attention of the Assistant Secretary of Defense (Manpower and Personnel) will be invited to any case wherein any question arises under critical review as to whether the retention of the individual in the armed services is clearly consistent with the interest of national security.

2. Security regulations in each Military Department should be reviewed to improve the safeguards against the entry into service of persons whose exclusion is justified on the grounds of security, prior to the appointing, commissioning or recall to active duty of any individual as an officer. In addition to the execution of Form 98, a national agency check should be accomplished. Because of the difficulties attendant to this course of action in a situation such as the call to active duty of newly appointed officers from ROTC sources, a reasonable length of time should be allowed to avoid the disruption of class entry schedules.

3. Personnel records and all investigative records in regard to the security of personnel not now effectively

correlated shall be correlated without delay in each of the Military Departments to insure that full facts are available for prompt and fair administration of all personnel matters.

Signature authenticated by: /s/
Signed

C. E. WILSON
Secretary of Defense

HENRY E. LOFDAHL
Chief, Correspondence
Control Section

103

7 April 1954

NUMBER 5210.9

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT Military Personnel Security Program

References:

(a) Joint Agreement of the Secretaries of the Armed Forces, Subject: Disposition of Commissioned and Enlisted Personnel of the Armed Forces of Doubtful Loyalty, dated 26 October 1948.*

(b) Office of the Secretary of Defense Memorandum to Department Secretaries, Subject: Policy with Respect to Loyalty Examination of Inducted Persons and Disposition of Inducted Persons Determined to be or Suspected of Being Disloyal, dated 15 November 1949.*

(c) Office of the Secretary of Defense Memorandum to Department Secretaries, Subject: Policy Concerning Military Personnel who are Considered Security Risks (M-11B-50), 19 February 1951.*

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* Will be cancelled by this directive.

(d) Presidential Executive Order 10450, Subject: Security Requirements for Government Employment, dated 27 April 1953.

(e) Presidential Executive Order 10491, Subject: Amendment of Executive Order No. 10450 of April 27, 1953, Relating to Security Requirements for Government Employment, dated 13 October 1953.

I. PURPOSE AND SCOPE

A. *Purpose*

1. The purpose of this directive is to effect reissue with certain modifications of the various Armed Services directives to apply to military personnel the criteria for security programs established as national policy for civilian personnel by Executive Order 10450 as amended by Executive Order 10491.

103A 2. This directive prescribes the standard and criteria for the separation of military members from the Armed Services in the interest of national security and the rejection of applicants for appointment or enlistment or of persons who would otherwise be inducted or involuntarily ordered into active military service whose acceptance into the services is not clearly consistent with the interests of national security. This is an administrative directive and does not preclude trial by court-martial when such action is considered appropriate by an Armed Service. It does not preclude separation on grounds other than security reasons under other applicable directives. Further, procedures pursuant to this directive should not be used in those cases in which security considerations are not the primary reason for initiation of action with a view toward separation.

B. *Scope*

This directive applies to all male and female commissioned officers, warrant officers, and all other members and

prospective members of the Armed Services, including the Coast Guard when the Coast Guard is operating as a part of the Navy Department.

II. General Policy

The Department of Defense will assume that the acceptance or retention of any member of the Armed Services is clearly consistent with the interest of national security unless and until a determination to the contrary is made by competent authority in the Armed Service concerned. However, when credible information which raises the question of security is received, action will be taken to determine whether acceptance or retention is consistent with the interests of national security. In no case will any person, reasonably believed to have at any time engaged in any of the activities listed in VII, C, 1, below, be appointed or enlisted in any of the Armed Services without the approval of the Secretary of the Armed Service concerned. Any member who is separated under the provisions of the appropriate Armed Service directive issued in implementation of this directive, or whose records reflect that he was separated under other authority while undergoing investigation under the provisions of such directive, will not be appointed or enlisted in any of the Armed Services at a later date without the approval of the Secretary of the Armed Service concerned.

III. Definition

National Security. As used herein, the term "national security" relates to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any and all acts designed to weaken or destroy the United States.

104 IV. Cancellation

References (a), (b), and (c), above, are cancelled.

V. Reporting of Information

It shall be the duty of every member of the Armed Services to report to his commanding officer any information coming to his attention which indicates that retention of any member of the Armed Services is not clearly consistent with the interests of national security. Investigations by activities of the Armed Services will develop all relevant facts with special emphasis being given to that information which supports or refutes an allegation stemming from the criteria hereinafter described.

VI. Disposition of Pending Cases

The processing of all security cases will be in accordance with instructions issued in implementation of this directive.

VII. Standard and Criteria

A. *Standard.*

The standard for appointment, enlistment, or retention within the Armed Services shall be that on all the available information it is determined that the appointment, enlistment, or retention is clearly consistent with the interests of national security.

B. *Criteria for Application of Standard.*

An officer or warrant officer of the Armed Services holds a sensitive position by virtue of his commission of warrant regardless of the duties and responsibilities of his assignment. Likewise, an enlisted member whose qualifications would normally require that he have access to classified information or materiel will be considered to hold a sensitive position regardless of the duties and responsibilities of his assignment. Nothing herein will serve to preclude temporary assignment to specially controlled duty as a security measure. However, indefinite assign-

ment to such duty will be made only as prescribed by the Secretary of the Armed Service concerned.

C. *Application of Criteria.*

1. The ultimate determination of whether acceptance or retention in the Armed Services is clearly consistent with the interests of national security must be an over-all common sense determination based on all available information. The activities and associations listed below, whether current or past and while not all inclusive, are of varying degrees of seriousness and warrant consideration of
104A action to effect such determination:

a. Commission of any act of sabotage, espionage, treason or sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

b. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests are inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

c. Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of Government of the United States by unconstitutional means.

d. Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which

has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights, under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means. (An organization, movement, or group, officially designated by The Attorney General of the United States to be totalitarian, Fascist, Communist, or subversive, to advocate or approve forcible or violent denial of Constitutional rights, or to seek alteration of the form of Government of the United States by unconstitutional means, shall be presumed to be of a character thus designated until the contrary be established).

e. Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

f. Failure or refusal to sign loyalty certificate DD Form 98; pleading protection of the Fifth Amendment or of Article 31, Uniform Code of Military Justice, in refusing to completely answer questions contained in DD Forms 98, 390, or 398; pleading protection of the Fifth Amendment or of Article 31, Uniform Code of Military Justice, or otherwise failing or refusing to answer any pertinent question propounded in the course of an official investigation, interrogation, or examination, conducted for the purpose of ascertaining the existence or extent, or both, of conduct of the nature described in a through e above, and g through m below.

g. Participation in the activities of an organization as a front for an organization referred to in d above, when his personal views were sympathetic to the subversive purposes of such organization.

h. Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the

individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

i. Participation in the activities of an organization referred to in d above, in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

j. Sympathetic association with a member or members of an organization referred to in d above.

k. Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in a through i above. A close continuing association may be considered to exist if the individual lives at the same address as, frequently visits, or frequently communicates with such person.

l. Close continuing association of the type described in k above, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

m. Any facts, other than as set forth in 2, below, which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of national security. Among matters which should be considered in this category would be the presence of a spouse, parent, brother, sister, or offspring in a nation, a satellite thereof, or an occupied area thereof, whose interests are inimical to the interests of the United States.

105A 2. *Separation Under Other Appropriate Directives or Regulations.*

Persons who fall within the criteria prescribed below are examples of members whose retention may not be clearly consistent with the interests of national security. However, action will not be initiated to separate them under this security program unless the criteria set forth in

VII, C, 1, above, is also substantially involved and action under other Armed Service directives or regulations or the Uniform Code of Military Justice has been determined to be inappropriate.

a. Willful violation or disregard of security regulations.

b. Intentional unauthorized disclosure to any person of classified information, or of other information disclosure of which is prohibited by law.

c. Any deliberate misrepresentation, falsification, or omission of material fact.

d. Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

e. All other behavior, activities, or associations which tend to show that the member is not reliable or trustworthy.

VIII. Administrative Policies.

The Secretary of each of the Armed Services will prescribe procedures to be taken within his department to implement this directive. Procedures so established shall be governed by the following:

A. Loyalty Certificate.

The following persons will be required to accomplish a DD Form 98 (Loyalty Certificate for Members of the Armed Forces).

1. Each applicant for appointment or enlistment before his appointment or enlistment.

2. Each member of a Reserve component of the Armed Services or retired member voluntarily entering into active military service with an Armed Service immediately prior to such entry.

106 3. Each inductee, member of a Reserve component of the Armed Services or retired member entering

into active military service other than voluntarily, and other non-volunteers prior to induction or immediately prior to entry on active duty.

B. *Application for Appointment.*

The completed DD Form 98 and DD Form 398, and where applicable DD Form 390, will be attached as an inclosure to the application for appointment. If an applicant fails or refuses to accomplish the DD Form 98 in its entirety his appointment will be denied. If the DD Form 98 is completed with qualification or entries are made thereon which provide reason for belief that his appointment is not clearly consistent with the interests of national security, such appointment will be held in abeyance and the application and allied papers will be processed as may be directed by the Secretary of the Armed Service concerned.

C. *Application for Enlistment.*

If an applicant for enlistment fails or refuses to accomplish the DD Form 98 in its entirety, his enlistment will be denied. If the DD Form 98 is completed with qualifications or entries are made thereon which provide reason for belief that his enlistment is not clearly consistent with national security, such enlistment will be held in abeyance and the application and allied papers will be processed as may be directed by the Secretary of the Armed Service concerned.

D. *Members of Reserve Components of the Armed Services.*

If a member of a Reserve component of any Armed Service voluntarily entering or being involuntarily called or ordered into active military service fails or refuses to accomplish the DD Form 98 in its entirety or makes entries thereon which provide reason for belief that his entry is not clearly consistent with the interests of na-

tional security, he will normally not be permitted to enter into active military service and procedures prescribed by the Secretary of the appropriate Armed Service with a view toward separation will be followed.

E. *Inductees.*

1. Known communists will not be inducted into the Armed Services.

106A 2. An inductee who refuses to accomplish satisfactorily the DD Form 98 in its entirety or who discloses significant derogatory information with respect to his background will be accepted into the service and retained on non-sensitive assignments in the lowest enlisted pay grade permitted by law, pending completion of a thorough investigation. In the event this investigation reveals that further retention would be inconsistent with the interests of national security, he will be separated under other than honorable conditions. Should the investigation disclose insufficient derogatory information to warrant separation in the interest of national security, he will be continued in the service and thereafter appropriately assigned. Upon termination of his obligated tour of duty, the character of separation shall be predicated upon the service performed.

F. *Separation of Members.*

1. Cases susceptible to resolution under court-martial procedure shall normally be so processed.

2. Where, for any reason, court-martial proceedings are inappropriate, impracticable, or inadvisable, administrative proceedings with a view toward separation of members whose continued service may not be clearly consistent with the interests of national security shall be initiated in accordance with applicable statutory authority.

3. In any administrative proceeding to separate a member of the Armed Services in the interest of national se-

curity, such member will be afforded an opportunity upon request to present any cause why he should not be so separated. Reasonable time will be afforded the member to present his cause; however, a period in excess of 15 days may be granted only in case of a showing of vital need.

4. Administrative procedure, as directed herein, shall not be trials or adjudications, but shall be directed to the end of obtaining factual findings and unbiased opinions by boards of officers that the members under investigation are, or are not, persons whose continued services are clearly consistent with the interests of national security. These recommendations are subject to review by the Secretary of the Armed Service concerned.

5. In cases where the approved findings and opinions of boards of officers indicate that the continued service of a member of the Armed Services is not clearly consistent with the interests of national security, he shall be separated and the character of the separation shall be predicated upon the gravity of the reasonably substantiated information in derogation.

107 6. In the case of separation of any member of the Armed Services, under conditions outlined in the preceding subparagraph, the DD Form 214 (Report of Separation) will cite as authority the appropriate Armed Service directive under which separation is effected.

7. If administrative proceedings hereunder culminate in findings by boards of officers, approved by competent departmental authority, to the effect that there is no reason for belief that retention of the member concerned is inconsistent with the interests of national security, such findings shall be conclusive and binding, and, may, in the absence of subsequently developed information substantially controverting the earlier findings, support assignment of the member to normal duties.

8. The actions and procedures adopted by each of the Armed Services in implementation of this directive shall emphasize and make specific provision for prompt and expeditious resolution of each case which may arise.

G. *Assignment Restrictions.*

During the period when a member of an Armed Service is under investigation for security reasons, and during the administrative processing of any case arising therefrom, the member will be placed under such restrictions with respect to assignments and access to classified information as are required to protect the interests of national security.

H. *Control of Investigative Information.*

The reports and other investigative material and information developed by investigations conducted pursuant to directives in implementation of this program shall remain the property of the investigative agencies conducting the investigations. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto to other departments and agencies conducting security programs without the prior approval of the Secretary of the Armed Service concerned.

I. *Cooperation with Investigative Agencies.*

All services will cooperate fully with Federal investigative agencies, and will avoid action tending prematurely to warn suspects that they are under suspicion or to compromise confidential sources of information. In cases presenting any substantial reason for belief that retention in the Armed Services may facilitate investigation and/or prosecution by Federal agencies, such retention may be effected notwithstanding any other provision of this directive. Similarly administrative procedures with a view

107A toward separation as directed herein may be withheld for a reasonable period pending completion of necessary investigation and advice by the investigative agency concerned that its missions will not be hampered by institution of such procedures.

IX. ACTION REQUIRED

Armed Service directives and regulations implementing this directive will be coordinated to insure uniformity with respect to methods, procedures, and safeguards and forwarded so as to reach this office not later than 60 days from the effective date of this directive.

X. EFFECTIVE DATE

The effective date of this directive is 7 April 1954.

C. E. WILSON
Secretary of Defense

108 **Affidavit**

County of Arlington }
State of Virginia } ss:

Hugh M. Milton, being duly sworn, deposes and says:

I am Assistant Secretary of the Army (for Manpower and Reserve Forces), Department of the Army, Washington, D. C. In this capacity, and under authority delegated to me by the Secretary of the Army, I reviewed the request of February 1, 1955, by counsel for John Henry Harmon III, to the Secretary of the Army that the character of Mr. Harmon's discharge be changed from Undesirable to Honorable. On July 5, 1955, under the authority of 60 Stat. 837, 5 U.S.C. 191a (1946), and 32 Code Fed. Regs. Section 581.3, promulgated thereunder, I referred this request together with Harmon's application for correction of military records to the Army Board for the Correction of Military Records. By letter of July 25, 1955, Mr. Har-

mon's counsel declined a hearing before the afore-mentioned Board because all the evidence and argument he wished to present had been offered before the Army Discharge Review Board. The Army Board for the Correction of Military Records then considered Mr. Harmon's application on the whole record and forwarded their recommendation to me, as delegate of the Secretary of the Army, for review as provided in 32 Code Fed. Regs. Section 581.3 (f)(2)(3). On November 10, 1955, after carefully reviewing the matter under criteria governing the Military Personnel Security Program at the time of Mr. Harmon's discharge, I approved the recommendation of the Army Board for the Correction of Military Records that Mr. Harmon's request be denied.

(s) Hugh H. Milton, II
Assistant Secretary of the Army

County of Arlington, State of Virginia ss:

Subscribed and sworn to before me this 14th day of November 1955.

My commission expires 7 September 1956.

(Signed) A. F. Spacla
Notary Public

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178 Filed November 23, 1955

Affidavit in Reply

State of New York)
County of New York) ss:

David I. Shapiro, being duly sworn, deposes and says:

I am a member of the Bar of the Court of Appeals of the State of New York, and the Supreme Court of the United States and one of the attorneys for John H. Harmon III, plaintiff in the within proceeding. I am fully familiar with all of the facts and circumstances involved

and make this affidavit in opposition to defendant's cross-motion for summary judgment, rather than plaintiff, inasmuch as plaintiff is now without the State of New York.

The Refusal to Appear Before the Army Board for the Correction of Military Records

On or about February 1, 1955, after the Army Board for the Correction of Military Records had, on January
179 27, 1955, refused to entertain plaintiff's application for a correction of his discharge certificate from "undesirable" to honorable, I wrote Hon. Robert T. Stevens, then the Secretary of the Army, requesting him to change plaintiff's discharge from "undesirable" to honorable. Annexed hereto and made a part hereof as plaintiff's Exhibit A is a copy of a letter from plaintiff's counsel to Robert T. Stevens dated February 1, 1955.

Thereafter and on February 4, 1955, I received a letter from Lt. Colonel Alfred Martin informing me that the matter had been turned over to the Assistant Secretary of the Army, Hugh M. Milton II, for reply, and that I would be advised as to what action the Army would take in connection with former Private Harmon's undesirable discharge. Annexed hereto and made a part hereof as plaintiff's Exhibit B is a photostatic copy of letter from Lt. Colonel Alfred Martin to plaintiff's counsel dated February 4, 1955. Thereafter plaintiff waited for a response from Mr. Milton and, hearing nothing further, commenced the within action in May, 1955.

On or about July 5, 1955, after plaintiff had filed the complaint herein, I received a communication from Mr. Milton concerning my letter of 1 February 1955 addressed to the Secretary of the Army. Annexed hereto as plaintiff's Exhibit C is a photostatic copy of a letter
180 from Hugh M. Milton II to plaintiff's counsel dated July 5, 1955. Thereafter and on July 7, 1955, I replied to Mr. Milton's letter of July 5, 1955, and informed

him that an action had been commenced by plaintiff in the District Court for the District of Columbia testing the validity of the undesirable discharge, but nevertheless offered to participate in a hearing before the Army Board for the Correction of Military Records. Annexed hereto as plaintiff's Exhibit D is a copy of a letter from plaintiff's counsel to Hugh M. Milton II, dated July 7, 1955. Thereafter and on or about July 20, 1955, I received another letter from Mr. Milton which informed me that the Executive Secretary of the Army Board for the Correction of Military Records had scheduled a hearing for 27 July 1955 in plaintiff's case; but that the Army could not agree that a discharge certificate must be based on the character of the soldier's service. Annexed hereto and made a part hereof as plaintiff's Exhibit E is a photostatic copy of a letter from Hugh M. Milton II, dated July 20, 1955. Thereafter and on July 25, 1955, and in accordance with Mr. Milton's letter of July 20, I wrote the Assistant Secretary of the Army that plaintiff would not appear before the Army Board for the Correction of Military Records inasmuch as it would appear that a hearing before said Board "would serve no useful purpose" inasmuch as the Army and plaintiff were in basic disagreement on the law relating to the issuance of discharge certifi-
181 cates. Annexed hereto and made a part hereof as plaintiff's Exhibit F is my letter to Hugh M. Milton, Assistant Secretary of the Army, dated July 25, 1955.

On or about November 10, 1955, the Assistant Secretary of the Army denied plaintiff's application for a correction of his military record. Annexed hereto as plaintiff's Exhibit G is a copy of the ruling of the defendant dated November 10, 1955.

Federal Benefits Denied by Reason of an Undesirable Discharge

In plaintiff's affidavit, duly sworn to August 17, 1955, and submitted in support of his motion for summary

judgment, plaintiff sets forth some of the benefits accorded veterans which he has been denied by reason of his Undesirable Discharge. I believe that a more exhaustive presentation may be helpful to the Court; accordingly, I am annexing hereto as plaintiff's Exhibit H a photostatic copy of a chart entitled "Incidents of Discharge," prepared in the Military Affairs Division, Office of the Judge Advocate General of the Army, which sets forth in detail all of the federal veterans' benefits which plaintiff has been deprived of.

Plaintiff was Discharged as Disloyal and/or Subversive under AR 615-370

On or about July 22, 1954, after plaintiff had filed an application for a change of his discharge from Un-
182 desirable to Honorable with the Army Discharge Review Board, I wrote a letter to Colonel James H. Hill, Office of the Adjutant General, Military Personnel Records Center, St. Louis, Missouri, requesting that the Discharge Review Board take immediate jurisdiction of plaintiff's application for change of his discharge certificate. In that letter, I informed Colonel Hill that "on the 2nd day of June, 1954, Private Harmon was given an undesirable discharge and was separated from the service at Transfer Point, Camp Pickett, Virginia, *under the authority of AR 615-370.*"

Prior to October 22, 1954, the date of former Private Harmon's "hearing" before the Army Discharge Review Board, I submitted a "Brief" to that Board, the opening sentence of which reads:

"This brief is submitted in the case of John H. Harmon III, formerly private, U.S. 51 207 184, who received an 'undesirable' discharge on June 2, 1954, *under the provisions of AR 615-370.*"

On or about November 29, 1954, after having been informed that the application had been denied, I wrote the

Adjutant General requesting "a copy of AR 615-370, under which Mr. Harmon received his 'undesirable' discharge on June 2, 1954 ..." I further pointed out that since an appeal was being made to the Army Board for the Correction of Military Records, "a copy of AR 615-370
183 would be most helpful." Annexed hereto as plaintiff's Exhibit I is a copy of a letter from me to the Adjutant General dated November 29, 1954. On or about December 17, 1954, I received a letter from the Adjutant General in which he stated: "There is also enclosed for your information a photostatic copy of Army Regulations 615-370." Annexed hereto as plaintiff's Exhibit J is a photostatic copy of a letter from the Adjutant General to me dated December 16, 1954.

On or about February 1, 1955, after the Army Board for the Correction of Military Records had denied an application for appeal, I wrote the Secretary of the Army (Exhibit A heretofore annexed) stating: "But on June 2, 1954, Private Harmon received an undesirable discharge and was separated from the service *under the authority of AR 615-370.*"

On or about July 20, 1955, pursuant to Mr. Milton's instructions, I received in my office a copy of a *Case Summary* prepared by Examiner Bernard Eisenberg for the Army Board for the Correction of Military Records. That case summary discloses that plaintiff's Service Record is marked: "Appl. was issued an undesirable discharge on 2 Jun 54, *UP AR 615-370.*" A copy of the case summary will be handed up to the Court on the argument of this motion.

Never once, prior to the time plaintiff's motion
184 for summary judgment was filed attacking defendant's answer as not complying with Rules 8(b) and 11 of the Federal Rules of Civil Procedure, was I, or plaintiff, or anyone else I know of, informed that plaintiff

was not discharged as disloyal or subversive under AR 615-370.

Sworn to before me this 22/day of November, 1955.

DAVID I. SHAPIRO
David I. Shapiro

HAROLD FRIEDMAN
Notary Public, State of New York
Qualified in Queens County
No. 41-6412025
Term Expires March 30, 1956

189 **Plaintiff's Exhibit "C"**

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
Washington 25, D. C.

In Reply Refer to:

July 5, 1955

Mr. David I. Shapiro
Dickstein. Shapiro & Friedman
Empire State Building
350 Fifth Avenue
New York 1, New York

Dear Mr. Shapiro:

This is in further reference to your letter of 1 February 1955, addressed to the Secretary of the Army, concerning the discharge of John H. Harmon, III, US 51 207 184.

Based on all information now available on the case of Mr. Harmon, it would appear that the initial action to effect his removal from the service with an undesirable discharge and that the subsequent action by the Army Discharge Review Board was consistent with the criteria established by the Department of Defense. This information may not, however, include all of the facts.

Accordingly, to insure that the ends of justice are served I have instructed the Army Board for the Correction of Military Records to undertake a fresh evaluation of the entire case. You will be informed in advance of the scheduled date for the hearing. At the hearing Mr. Harmon will have the opportunity to present in his own behalf any evidence he may wish to have considered.

Sincerely yours,

HUGH M. MILTON II.
Hugh M. Milton II
Assistant Secretary of the Army

190 **Plaintiff's Exhibit "D"**

July 7, 1955

Hon. Hugh M. Milton II
Assistant Secretary of the Army
Department of the Army
Office of the Assistant Secretary
Washington 25, D. C.

Re: Harmon, John H., III US 51 207 184

Dear Mr. Milton:

With respect to your letter of July 5, 1955, please be advised that during the month of May, 1955, an action was commenced by Mr. Harmon in the United States District Court for the District of Columbia, contesting the validity of his "Undesirable" Discharge.

Essentially, it is believed that since Mr. Harmon's service record bears character and efficiency ratings of "excellent," his discharge certificate must be changed from "Undesirable" to "Honorable." Examination of our file indicates that your office has all the facts in the case that we are aware of. As a matter of fact, we based our appeal to the Army Board for the Correction of Military Records on the testimony adduced before the Army Dis-

charge Review Board together with Mr. Harmon's service records, which were then before the Board. We have no additional facts to present on Mr. Harmon's behalf, except, of course, character testimony, but I do not believe such evidence germane to the issue.

It should be noted that while I hold no brief for Mr. Harmon's past political associations, nor his attempt to secure contributions from friends to aid the defense of two individuals indicted under the Smith Act, none of this seems pertinent to the issue in question. That is, that the discharge certificate must accurately and adequately reflect the character of Mr. Harmon's military service. Inasmuch as the character of his service, as set forth in his service record, is "excellent," he should have received an "Honorable Discharge."

191 If it is your belief that the Army Board for the Correction of Military Records is ready to accept this basic premise, which we consider to be the law, I most gratefully accept, on Mr. Harmon's behalf, your offer to participate in said Board's "fresh evaluation of the entire case." In the event I am mistaken with respect to the import of your letter, an appearance before the Board would appear to be pointless, since we should be unable to introduce additional evidence on the issue in question. Accordingly, I should appreciate your thinking on this matter so that I may advise the Department of Justice with respect to our future conduct in the litigation now pending in the District Court.

Very truly yours,

DICKSTEIN, SHAPIRO & FRIEDMAN

By:

DAVID I. SHAPIRO

DIS:LR

192 **Plaintiff's Exhibit "E"**

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
Washington, D. C.

July 20, 1955

David I. Shapiro, Esquire
350 5th Avenue
New York 1, New York

Dear Mr. Shapiro:

Reference is made to your letter dated 7 July 1955 wherein you request that the Army Board for Correction of Military Records consider the entitlement of Mr. John H. Harmon III to an honorable discharge based solely upon the character of his military service.

Under policies governing the Military Personnel Security Program, the Department of the Army cannot acquiesce in your request that the Board's consideration be thus limited. The Board's consideration will be based upon all material evidence of record, in order that a determination may be made relative to error or injustice in the instant case.

I have been informed by the Executive Secretary of the Board that Mr. Harmon's case has been scheduled for hearing at 9:00 A.M., Wednesday, 27 July 1955. It would be appreciated if you will advise the Board by registered mail whether or not you intend to appear on the scheduled date.

Sincerely yours,

HUGH M. MILTON II
Hugh M. Milton II
Assistant Secretary of the Army

193 **Plaintiff's Exhibit "F"**

July 25, 1955

Hugh M. Milton, II
Assistant Secretary of the Army
Office of the Assistant Secretary
Washington 25, D. C.

Re: John H. Harmon, III

Honorable Sir:

In view of your response dated 20 July, 1955 to my letter date 7 July, 1955, it would appear that a hearing before the Army Board for the Correction of Military Records would serve no useful purpose.

All of the evidence we have to offer has already been submitted to the Army Discharge Review Board. Our legal position has been set forth in our brief heretofore filed with that Board. All of this material is now in the hands of the Army Board for the Correction of Military Records.

Inasmuch as you point out that the Board may make a determination relative to error or injustice in the instant case, it certainly would have the power to do so on the basis of the record before it. Unfortunately we have no new evidence to present, for if we did, we would be most desirous of an opportunity to appear in person before the Board.

Accordingly, I am informing the Executive Secretary of the Army Board for the Correction of Military Records that all of our evidence and our legal position was set forth during the hearing before the Army Discharge Review Board and in view of our inability to furnish additional evidence with respect to the matters in question, we will not appear before the Board for the Correction of Military

Records on 27 July 1955, as we have no additional material to offer in support of our client's position.

Sincerely yours,

DAVID I. SHAPIRO

DIS:LR
cc: Executive Secretary
Army Board for the Correction of Military Records
Pentagon Bldg., Room 1E-512, Washington 25, D. C.
[Registered Mail, Return Receipt Requested]

194 **Plaintiff's Exhibit "G".**

DEPARTMENT OF THE ARMY
Washington 25, D. C.

14 November 1955

In Reply Refer to:
David I. Shapiro, Esquire
350-5th Avenue
New York 1, New York

Dear Sir:

Further reference is made to the application for correction of military record, submitted by your office in behalf of John H. Harmon III, US 51 207 184.

Under the provisions of Paragraph 21b, Army Regulations 15-185, 18 July 1955, there is inclosed a copy of the decision of the Assistant Secretary of the Army in the matter.

Sincerely yours,

GERALD C. COWDEN
Gerald C. Cowden
Executive Secretary
Army Board for Correction
of Military Records

Incl:
Memo dated 10 Nov 1955

195 Nov. 10, 1955

AG 201—HARMON, JOHN H., III
US 51 207 184

MEMORANDUM FOR THE ADJUTANT GENERAL:

Having approved the findings, conclusions and recommendation of the Army Board for Correction of Military Records in the case of JOHN H. HARMON III, US 51 207 184, and under the provisions of Section 207 of the Legislative Reorganization Act of 1946, as amended (Public Law 220, 82d Congress), and General Orders 67, dated 10 September 1954, it is directed:

That in the case of JOHN H. HARMON III, his application for correction of military records, dated 1 December 1954, be, and hereby is, denied.

(Sgd) HUGH M. MILTON II
Hugh M. Milton II
Assistant Secretary of the Army

Note

Page 58 is blank;
Page 59 is on Card 2;
Page 60 is blank.

197 **Plaintiff's Exhibit "T"**

November 29, 1954

Major General John A. Klein, U.S.A.
The Adjutant General
Department of the Army
Washington 25, D. C.

Re: AGPI-I 201 Harmon, John H. III.
US 51 207 184 (8 Jan 54)

Dear Sir:

I am in receipt of your communications of 15 November and 19 November, 1954, wherein you advise my client, John H. Harmon, III, that the Army Discharge Review Board has determined that he properly received a discharge as "undesirable" on 2 June, 1954, and that no change can be made in the type of discharge furnished.

On October 23, 1954, I requested a copy of the transcript of the proceedings before the Army Discharge Review Board and a copy of AR 615-370, under which Mr. Harmon received his "undesirable" discharge on 2 June, 1954, but I have not heard from you in this respect.

Inasmuch as my client intends to appeal to the Army Board for the Correction of Military Records, a transcript of the proceedings before the Army Discharge Review Board would be most helpful. However, and in the event I am not permitted to have a copy of the transcript, a copy of AR 615-370 would be most helpful.

Thank you for your many courtesies in this matter.

Very truly yours,

DICKSTEIN, SHAPIRO & FRIEDMAN
By:
DAVID I. SHAPIRO.

DIS:ag

198 **Plaintiff's Exhibit "J"**

DEPARTMENT OF THE ARMY
OFFICE OF THE ADJUTANT GENERAL
Washington 25, D. C.

16 Dec. 1954

In Reply Refer to

AGRC-SC 201 Harmon, John H. III
US 51 207 284 (29 Nov 54)
Mr. David I. Shapiro
Dickstein, Shapiro & Friedman
Empire State Building
New York 1, New York

Dear Mr. Shapiro:

In response to your recent request, there is inclosed a copy of the proceedings before the Army Discharge Review Board in the case of your client, former Private John H. Harmon, III, service number US 51 207 184.

There is also inclosed for your information a photostatic copy of Army Regulations 615-370.

Sincerely yours,

JOHN A. KLEIN
John A. Klein
Major General, USA
The Adjutant General

2 Incl
1. Board Proceedings
2. AR 615-370 (photo)

Defendant's Exhibit 1

Filed in Open Court, November 28, 1955

PROCEEDINGS OF THE ARMY DISCHARGE REVIEW BOARD

22 October 1954

In the Case of

Former Private John H. Harmon III

hereinafter referred to as the APPLICANT

The Board was called to order. The Secretary-Recorder, Reporter, and the members of the Board were sworn.

Applicant elected to appear before the Board and testify in his own behalf. He designated as counsel, Mr. David I. Shapiro, Attorney-at-Law, Empire State Building, 350 Fifth Avenue, New York, and Associate Counsel, Mr. James Heller, Washington, D. C.

The authority under which it convened was read by the Secretary-Recorder. Applicant was asked if he desired to challenge any member of the Board for cause, and he replied in the negative.

The applicant was given full opportunity to be present during all open sessions of the Board to present evidence in his behalf, testify in person, or submit a written statement or brief.

The following evidence was introduced in the record and is appended hereto as:

Exhibit "B"—Application for Review of Discharge DD Form No. 293.

Exhibit "C"—Brief of Applicant's 201 File.

Secretary-Recorder: In giving evidence in support of a change in the type of your separation from the Army, do you wish to testify under oath or do you prefer to make an unsworn statement?

Applicant: I wish to testify under oath.

(Secretary-Recorder placed applicant under oath)

Presiding Officer: Mr. Harmon, you may now proceed, under the guidance of your counsel, Mr. Shapiro, and asso-

ciate counsel, Mr. Heller, to present such evidence as you desire in your appeal for a change in the type of your discharge.

Counsel: Mr. Harmon, are you now or have you ever been a member of the Communist Party?

Applicant: No, I have not.

Counsel: Are you now or have you ever been a member of any communistic organization?

Applicant: No, I have not.

Counsel: Now, when you were stationed at Indiantown Gap Military Reservation at Indiantown Gap, Pennsylvania, you refused to answer that question under Article 31 on the grounds of possible self incrimination. Will you please tell the Board why you refused to answer the question?

Applicant: Well, quite frankly, I was afraid for one reason and, secondly, I did not have the advice of counsel, I was afraid in the sense that when I was first sent up to Indiantown Gap I was awakened from sleep and introduced to six gentlemen from the Counter Intelligence Corps, and that included the Commanding Officer, a stenographer, and a Sergeant-at-Arms, and I was searched and then taken down to G-2 headquarters and there I was questioned by the battery of these gentlemen from the Counter Intelligence Corps. I did not feel that I could truthfully and honestly answer all the questions that were presented to me—when they were thrown at me in such rapid fire.

Counsel: Mr. Harmon, did you know at the time that you were questioned by these gentlemen what organizations had been listed by the Attorney General of the United States as subversive or communistic or fascist, under the provisions of Executive Order No. 10450, which provided for a list of these organizations?

Applicant: Frankly, no, sir. The only time I had ever really seen a list of subversive organizations was when I was first inducted. At the time that I was questioned I was not aware of all the organizations on the list, and I

could not see them, and I refused to answer under Article No. 31, whether I had belonged to any organization or association with any of them. However, after my discharge and securing counsel, my counsel, Mr. Shapiro, showed me a list of these organizations, and I do not believe that I have ever belonged to or associated with any of these organizations. However, I was informed by The Adjutant General's Office that the Detroit Urban League was supposed to be a subversive organization. I have belonged to the National Association for Advancement of Colored People, I don't know, even they may be now a subversive organization.

Counsel: And, are those the reasons that you refused to answer that question under Article 31?

Applicant: Yes, they are.

Counsel: Let's continue with the rest of the questions. Are you now or have you ever been a member of any organization, association, movement, group or combination of persons which advocates the overthrow of our constitutional form of government?

Applicant: No, I have not.

Counsel: Are you now or have you ever been a member of an organization, association, movement, group or combination of persons which advocates the overthrow of our constitutional form of government, or of an organization, association, movement, group or combination of persons which had adopted the policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States or of seeking to alter the form of government of the United States by unconstitutional means?

Applicant: No, I have not.

Counsel: Are you now or have you ever been a member of any organization, association, movement, group or combination of persons which seek to alter the form of government of the United States by unconstitutional means?

Applicant: No, I have not.

Counsel: Are you now or have you ever knowingly and willingly been a member of any organization, association, movement, group or combination of persons which to your knowledge have engaged in subversive activities in any nature?

Applicant: I don't believe so.

Counsel: Have you ever given financial support to any communistic organization?

Applicant: Yes, I have.

Counsel: Will you explain that?

Applicant: It was brought out, I think, in the interrogation at Indiantown Gap in May of 1953, that I did solicit funds for the defense of persons under the Smith Act.

Counsel: Who were these persons?

Applicant: They were the husbands of Gertrude Schotz and Peggy Wellman.

Counsel: Who are Gertrude Schotz and Peggy Wellman?

Applicant: Gertrude Schotz and Peggy Wellman, they were employees, and Peggy Wellman was a waitress and Gertrude Schotz was, I believe, in the child camp at Camp Lakeland where I worked during the summer of 1951 and 1952.

Counsel: And, you heard that their husbands were indicted under the Smith Act?

Applicant: Yes, sir, it came to my attention, I think it was through the newspapers.

Counsel: What was the financial condition of Mrs. Schotz and Mrs. Wellman, do you know?

Applicant: Well, just off hand I would say that financially they probably weren't in position to fight effectively, that is, in terms of financial support to clear their husbands of indictment rendered against them.

Counsel: Well, why do you think that you should assist them in getting financial support for their husbands?

Applicant: Well, I have believed and still do that a person is innocent of any charges presented against him until proven otherwise. Even a murderer is entitled to this defense.

Counsel: May I ask you this question, Mr. Harmon, in peaking of any financial support given to any communist rganization or communist person, was the question of oliciting funds for two individuals, I believe, whose hus-ands had been indicted under the Smith Act, and you had een familiar and friendly with these individuals wives t a place called Camp Lakeland, is that correct?

Applicant: Yes, that is correct.

Counsel: And that is the extent of any financial support ou have given to any communist organization or any ommunist member?

Applicant: Yes, it is.

Counsel: Are you a member of any communist cell or nit?

Applicant: No, I am not.

Counsel: You have not, I take it, solicited funds for the ommunist Party itself?

Applicant: No, I have not.

Counsel: And, I also take it, that at no time have you olicited funds for any communist cause other than for the upport of these individuals you mentioned who were in-icted under the Smith Act?

Applicant: That is correct.

Counsel: Have you at any time solicited funds for any rganization which advocates violence or forceful over-hrow of the United States Government?

Applicant: No, I have not.

Counsel: Would you in the defense of the United States f America bear arms and fight against any communist ominated enemy in a time of a national emergency?

Applicant: Yes, I would.

Counsel: Have you at any time given any pledge or llegiance to the aims and policy of the Soviet Union?

Applicant: No, I have not.

Counsel: Have you in any manner or at any time pledged ourself to defend the Soviet Union?

Applicant: No, I haven't.

Counsel: You have stated under oath that if this nation were in conflict with the Soviet Union, you would defend the United States and fight against a communist enemy or communist influenced enemy, or any other enemy of the United States because of patriotic motives or perhaps you wouldn't want to get yourself in any trouble or subject yourself to disciplinary action?

Applicant: No, I would defend the United States motivated by patriotic motives.

Counsel: What do you mean by that? Will you explain that to the Board?

Applicant: I think the same question or a similar question was put to me when I was interrogated in May of 1953, and I declined to answer invoking Article No. 31, Uniform Code of Military Justice. I did so at the time simply because I felt that loyalty and willingness to defend one's country regardless is implicit or implied in citizenship, and I did do it, and it would come as a second nature, really.

Counsel: Mr. Harmon, prior to the time you were inducted into the Army, did you ever commit an unlawful act of any kind?

Applicant: No, I never did.

Counsel: While you were in the service, did you ever commit an unlawful act or acts in violation of any Army Regulation to your knowledge?

Applicant: To my knowledge, I did not. I might explain that I was involved in an automobile accident and in the investigating of the accident, not in line of duty, but not due to my own misconduct, but other than that, no, I never did.

Counsel: As I understand it, your service record with respect to the only comments on your character and on your efficiency, only ones marked as known are marked as excellent. Have you ever had any reason to believe anyone might indicate that the character of your service or your conduct or your deportment, while in the service of

the United States, as a member of the United States Army, was there any other form subject to criticism or disciplinary action or disciplinary proceedings of any kind?

Applicant: No, sir, I was inducted into service and it became just like another job to me, and in order to get ahead you have to work, and I gave what I thought was my best, and I was never aware of any indication that my service was in any way undesirable or lacking.

Counsel: Mr. Harmon, do you believe that you are a completely unswerving loyal citizen of the Government of the United States?

Applicant: I say definitely so.

Counsel: Why do you say that?

Applicant: Well, it is really something hard to explain, but yet we have in this country what we call liberty and freedom and equality of opportunities for all, and having read the Constitution more than once, it has been very meaningful to me. The United States—living here is all that I have ever known and I'll tell you that I was born in Texas, you know, and that is perhaps the only loyalty I have which is greater than that to the United States, but other than that my loyalty is unswerving, but we don't improve, we criticize our own weak points.

Counsel: In your own mind, do you believe that you are completely and unswervingly loyal?

Applicant: In my own mind, yes.

Counsel: You would not hesitate to lay down your life in defense of this country against any and all enemies whatsoever?

Applicant: No, I would not.

Counsel: I have no other questions.

Presiding Officer: Does the associate counsel have anything to offer?

Associate Counsel: No, sir.

Presiding Officer: Any questions by the members of the Board?

Member: Mr. Harmon, were you ever or are you now a member of the Detroit Urban League?

Applicant: No, sir, I was not and I am not now.

Member: At the time of your induction, did you make out a Form No. 98 and 98-A?

Applicant: Is that the form with the list of organizations?

Member: That is correct?

Applicant: Yes, sir.

Member: Did you consider that it was your duty when you were at Camp Lakeland to solicit funds for Mrs. Wallman and Mrs. Schotz, weren't there other people there that could have done it as well as you?

Applicant: Undoubtedly so.

Member: Why did you consider it your duty?

Applicant: I might explain, when I was in school I was once ill and the hospital bills were such that I could not have paid it myself, and people unknown to me came forward with a contribution to help defray the expenses.

Member: Who were these people?

Applicant: I don't know.

Member: You still don't know?

Applicant: No, never knew who the e people were.

Member: How much money was contributed at the time you were in the hospital?

Applicant: I think it was pretty close to one hundred and ninety-eight dollars.

Member: You have no idea from whence this money came?

Applicant: I have my idea but I have nothing concrete to go on, I don't know who the people were or the amount of the contributions, and in a like manner I had known these two women and I had read in the newspapers that their husbands were indicted, and it was just a showing of friendship and I attempted to solicit funds in the defense of their husbands.

Member: At the time you were in the hospital, you say you have an idea of the people who contributed the funds to you in this hospital, or do you know if any of those

people were ever affiliated with any communist front organization?

Applicant: In my opinion, no, sir.

Member: Mr. Harmon, on the 7th of May 1953 you were asked certain questions in regard to which have been repeated this morning by your counsel, and at that time you refused to answer those questions, and you tell us this morning you refused based on the fact that you did not have advice of counsel, and you did not know the names of all the organizations that might be listed on the Attorney General's list. I am willing to grant that probably nobody can recall the names of those organizations, but it is inconceivable to me that a man doesn't know whether or no he belonged to an organization that would use acts of force or violence in the overthrow of our form of government, or any other questions they asked you there?

Applicant: Well . . .

Member: I don't see why you had to have advice of counsel to say you did not belong to them?

Applicant: Well, sir, I will give you an example. When I was interrogated in May of 1953, I mentioned that I was asked questions all at once, and some of the questions ran to this extent. To whom have you given the plans of Indiantown Gap Military Reservation? How long have you been a courier for the Soviet Union or to some of its satellites? My instant reaction was, what is going on here, you know. I hadn't realized that I was such a cloak and dagger personality. I say that I was afraid, and really being fearful I did not wish to answer these questions for fear I might say something which was not actually the truth.

Member: For example, when you were asked the question whether you had knowingly or willingly supported the platform of the Communist Party or were a member of the Soviet Union, certainly you knew at the time whether or not you have ever supported the communist doctrine or the communist platform, did you not?

Applicant: No, sir, I couldn't say that because frankly I am not familiar with all the platforms or policies of the Communist Party, and it might be quite conceivable that some of the things the Communist Party or its front organizations try to put over, might just be that I have the same ideas.

Member: You knew whether or not you were a member of the Communist Soviet Union, did you not?

Applicant: Yes, sir.

Member: Why did you refuse to answer that?

Applicant: I answered the question as to whether I had been a member of the Communist Party in the United States of America. I refused to answer that question, I think, well, I didn't know what to think, sir.

Member: You were also asked whether communistic teachings were propagated at Comp Lakeland and you refused to answer that, why?

Applicant: I can only say again, it is quite possible that communistic teachings may have been taught and advocated at Camp Lakeland, but I don't believe they were. It is quite possible but I didn't, at that time, wish to commit myself without putting in certain other facts.

Member: You could certainly say, not to my knowledge?

Applicant: Yes, sir, I could have.

Member: Well, Mr. Shapiro asked you this question, in time of a national emergency, would you in the defense of the United States of America fighting against a communist dominated enemy or a communist influenced enemy, because of patriotic motives or because you didn't want to subject yourself to disciplinary action. I didn't quite understand your reply, would you give me the answer to that question again?

Applicant: Surely, sir. I would do so, I would fight to preserve the principles of this country on any given occasion, if I were called upon to do so. If we were directly threatened each of us would have to defend the country the best way we knew how. I believe when I

was questioned on that point in May 1953, the person who questioned me made the question appear, that we know you are such and such, Harmon, come out with it and say you would only fight because you would be forced to do so. That isn't so. It is my thought or impression that whatever actions are necessary to defend a principle, you go ahead and do it, don't have to shout to the roof top about it.

Member: I understand your reply to that question is, you would do it for patriotic motives?

Applicant: Yes, sir.

Presiding Officer: Mr. Harmon, were you employed at Camp Lakeland in 1951 and 1952?

Applicant: Yes, sir, I was employed at Camp Lakeland.

Presiding Officer: In what capacity?

Applicant: In 1951, sir, I was a kitchen helper, and in 1952 I was assistant breakfast cook.

Presiding Officer: How did you get this job?

Applicant: I was looking around for summer employment in 1951, and I was introduced to Sol Vail, who was at that time the manager of the camp.

Presiding Officer: Who introduced you to Mr. Vail?

Applicant: My father introduced me to Mr. Vail, and he mentioned he had a position open in the kitchen and that was the type of work I had done while going through school, and I was subsequently hired as a kitchen helper.

Presiding Officer: Now, Mr. Harmon, were there any communist activities at Camp Lakeland while you were so employed there to your knowledge?

Applicant: No, sir, I don't believe so.

Presiding Officer: To the best of your knowledge there were not?

Applicant: No, sir.

Presiding Examiner: While there you met Peggy Wellman and Mrs. Schotz, is that correct?

Applicant: Yes, sir.

Presiding Officer: They were both employed there?

UNDESIRABLE DISCHARGE

FROM THE ARMED FORCES OF THE UNITED STATES OF AMERICA

THIS IS TO CERTIFY THAT

JOHN HENRY HARMON III US 51 207 184 Private E-1 AUS

WAS DISCHARGED FROM THE

ARMY OF THE UNITED STATES

ON THE 2nd DAY OF June 1954

AS UNDESIRABLE

WALTER A KUHNS
Major AGC

DD FORM 1 MAY 50 258A

PLAINTIFF'S EXHIBIT 1

14

D-17

REPORT OF SEPARATION FROM THE ARMED FORCES OF THE UNITED STATES

CHARACTER OF SEPARATION: **UNDESIRABLE**

DEPARTMENT: **ARMY**

SEPARATION DATA

1. LAST NAME – FIRST NAME – MIDDLE NAME	2. SERVICE NUMBER	3. GRADE – RATE – RANK AND DATE OF APPOINTMENT	4. COMPONENT AND BRANCH OR CLASS
Harmon, John Henry III	US 51 207 184	Pvt-1(P) 2 Jun 54	AUS TC

5. QUALIFICATIONS: SPECIALTY NUMBER OR SYMBOL	RELATED CIVILIAN OCCUPATION AND D. O. T. NUMBER	6. EFFECTIVE DATE OF SEPARATION: DAY	MONTH	YEAR	7. TYPE OF SEPARATION
1824	Cook 02-26.31	2	June	54	Discharge

8. REASON AND AUTHORITY FOR SEPARATION	9. PLACE OF SEPARATION
AR 615-370	Transfer Point, Camp Pickett, Virginia

10. DATE OF BIRTH: DAY	MONTH	YEAR	11. PLACE OF BIRTH (City and State)	12. DESCRIPTION: SEX	RACE	COLOR HAIR	COLOR EYES	HEIGHT	WEIGHT
17	Jul	31	Houston, Texas	Male	Negro	Black	Brown	5'9"	155

SELECTIVE SERVICE DATA

13. REGISTERED: YES	NO	SELECTIVE SERVICE NUMBER	14. SELECTIVE SERVICE LOCAL BOARD NUMBER (City, County, State)	15. INDUCTED: DAY	MONTH	YEAR
X		50 16 31 304	LB 16, New York, New York	31	Oct	52

16. ENLISTED IN OR TRANSFERRED TO A RESERVE COMPONENT: YES	NO	COMPONENT AND BRANCH OR CLASS	COGNIZANT DISTRICT OR AREA COMMAND
	X	Not Applicable	Not Applicable

17. MEANS OF ENTRY OTHER THAN BY INDUCTION: ☐ ENLISTED ☐ REENLISTED ☐ COMMISSIONED ☐ CALLED FROM INACTIVE DUTY

18. GRADE – RATE OR RANK AT TIME OF ENTRY INTO ACTIVE SERVICE: pvt-1

19. DATE AND PLACE OF ENTRY INTO ACTIVE SERVICE: DAY	MONTH	YEAR	PLACE (City and State)	20. HOME ADDRESS AT TIME OF ENTRY INTO ACTIVE SERVICE (St., R.F.D., City, County and State)
31	Oct	52	New York, New York	Box 77, Bucknell University, Lewisburg, Pa.

SERVICE DATA

STATEMENT OF SERVICE FOR PAY PURPOSES	A. YEARS	B. MONTHS	C. DAYS
21. NET ( ) SERVICE COMPLETED FOR PAY PURPOSES EXCLUDING THIS PERIOD	Not	Applicable	
22. NET SERVICE COMPLETED FOR PAY PURPOSES THIS PERIOD	1	7	2
23. OTHER SERVICE (Act of 16 June 1942 as amended) COMPLETED FOR PAY PURPOSES	0	0	0
24. TOTAL NET SERVICE COMPLETED FOR PAY PURPOSES	1	7	2

25. ENLISTMENT ALLOWANCE PAID ON EXTENSION OF ENLISTMENT, IF ANY: DAY / MONTH / YEAR / AMOUNT: Not Applicable

26. FOREIGN AND/OR SEA SERVICE: YEARS 0 / MONTHS 0 / DAYS 0

27. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: None

28. MOST SIGNIFICANT DUTY ASSIGNMENT	29. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known)
56th Trans Co (Lt Trk)(Army)	None

30. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND/OR POST-GRAD. COURSES SUCCESSFULLY COMPLETED	DATES (From-To)	MAJOR COURSES	31. SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED
None	None	None	All Basic Training

INSURANCE AND PAY DATA

GOVERNMENT INSURANCE INFORMATION: (A) Permanent plan premium must continue to be paid when due, or within 31 days thereafter, or insurance will lapse. (B) Term insurance not under waiver same as (A) above. (C) Term insurance under waiver – premium payment must be resumed within 120 days after separation. Forward premiums on NSLI to Veterans Administration District Office having jurisdiction over the area shown in Item 47. Forward premiums on USGLI to Veterans Administration, Washington 25, D. C. (See VA Pamphlet 9-3). When paying premiums give full name, address, Service Number, Policy Number(s), Branch of Service, date of separation. Contact nearest VA office for information concerning Government Life Insurance.

32A. KIND & AMT. OF INSURANCE & MTHLY. PREMIUM	32B. ACTIVE SERVICE PRIOR TO 26 APRIL 1951	33. MONTH ALLOTMENT DISCONTINUED	34. MONTH NEXT PREMIUM DUE
None Indemnity	☐ YES ☒ NO ☐ UNKNOWN	Not Applicable	Oct 54

35. TOTAL PAYMENT UPON SEPARATION	36. TRAVEL OR MILEAGE ALLOWANCE INCLUDED IN TOTAL PAYMENT	37. DISBURSING OFFICER'S NAME AND SYMBOL NUMBER
Not Applicable	Not Applicable	Not Applicable

AUTHENTICATION

38. REMARKS (Continue on reverse)
Blood Group "B"
No days lost under sec 6(a) App 2b MCM, 1951.

39. SIGNATURE OF OFFICER AUTHORIZED TO SIGN

NAME, GRADE AND TITLE (Typed)
JOHN T. DALY
CWO USA
Asst Adj Gen

40. V A BENEFITS PREVIOUSLY APPLIED FOR (Specify type)
COMPENSATION, PENSION, INSURANCE BENEFITS, ETC.: None
CLAIM NUMBER: None

PERSONAL DATA

41. DATES OF LAST CIVILIAN EMPLOYMENT: FROM	TO	42. MAIN CIVILIAN OCCUPATION	43. NAME AND ADDRESS OF LAST CIVILIAN EMPLOYER
None		None	Not Applicable

44. UNITED STATES CITIZEN	45. MARITAL STATUS	46. NON-SERVICE EDUCATION (Years successfully completed): GRAM-MAR	HIGH SCHOOL	COL-LEGE	DEGREE(S)	MAJOR COURSE OR FIELD
☒ YES ☐ NO	single	8	4	4	BA	Political Science

47. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER SEPARATION (St., R.F.D., City, County and State)	48. SIGNATURE OF PERSON BEING SEPARATED
601 E. 226th St. Bronx New York	John Henry Harmon III

ALL ENTRIES APPLY TO CURRENT PERIOD OF SERVICE (unless otherwise indicated)

DD FORM 1 JUL 52 214 EDITION OF 1 JAN 50 IS OBSOLETE. **INDIVIDUAL'S COPY** (TO BE DELIVERED TO THE INDIVIDUAL BEING SEPARATED)

1

PLAINTIFF'S EXHIBIT 2

INCIDENTS OF DISCHARGE

	HONORABLE	GENERAL	UNDESIRABLE	DISCHARGE**** (under other than honorable conditions)	BAD CONDUCT DISCHARGE ADJUDGED BY SCM	BAD CONDUCT DISCHARGE ADJUDGED BY GCM	DISHONORABLE **	RESIGNATION FOR THE GOOD OF THE SERVICE IN LIEU OF COURT-MARTIAL***	AUTHORIZATION FOR BENEFIT
Authority for Discharge	AR 615-360 (EM) SR 605-290-1 (Officers)	AR 615-360 (EM) SR 605-290-1 (Officers)	AR 615-360 (EM)	SR 605-290-1 (Officers)	Sentence of either a general or special court-martial	Sentence of either a general or special court-martial	Sentence of general court-martial (Dismissal by sentence of general court-martial is equivalent to dishonorable discharge)	AR 605-275 (Officers) SR 605-290-1(Officers) (The provisions of SR 605-290-1, 17 June 1952, apply to all officers of the Army; and SR 140-175-1, 9 March 1953 provide that Reserve officers being separated will be furnished discharge certificates in accordance with SR 605-290-1)	
Conditions under which issued	Convenience of The Government; Expiration of enlistment; Minority; Resignation; Dependency or hardship; Disability; Revocation or termination of appointment; Discharge to accept appointment	Convenience of the Government; Disability, disloyal or subversive; Expiration of enlistment; Inaptitude; Minority; Resignation-Unsuitability; Homosexuality	Misconduct; Homosexuality; Qualified resignation; unfitness; Disloyal and subversive; Disability	Qualified resignation; Unsuitability and misconduct; Conviction of felony by civil authorities; Homosexuality; Physical disability					
Benefits Administered by the Army									
Headstone Marker	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 1, act of 1 July 1948 (62 Stat. 1215; 24 U.S.C. 279a)
Mustering-out Payments	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Mustering-Out Payment Act of 1944 (58 Stat. 8), as amended (38 U.S.C. 691 et seq.); Title V, Veterans' Readjustment Assistance Act, 1952 (66 Stat. 688)
Payment for Accrued Leave	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Armed Forces Leave Act of 1946 (60 Stat. 963), as amended (37 U.S.C. 32 et seq.
Retirement Pay for Reserves under title III, act of 29 June 1948 (62 Stat. 1087)	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Title III, Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1087), as amended (10 U.S.C. 1036 et seq.)
Transportation Allowance for Dependents and Shipment of Household Goods	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Paragraphs 7000, 8009(5), Joint Travel Regulations
Transportation in Kind	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Paragraph 5300, Joint Travel Regulations
Burial in National Cemetery	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 1, act of 14 May 1948 (62 Stat. 234; 24 U.S.C. 281)
Use of Wartime Title; Wear of Uniform of Wartime Grade upon Occasions of Ceremony	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 2, act of 21 June 1930 (c.563, 46 Stat. 793; 10 U.S.C. 1028b)
Admission to Soldiers' Home *****									
Benefits Administered by the Veterans' Administration ******									
Compensation for Service Connected Disability	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Act of 20 March 1933 (48 Stat.8), as amended (38 U.S.C. 701 et seq.) Act of 11 May 1951 (c.49, 65 Stat.40; 38 U.S.C. 745) Veterans Regulation No. 1(a), as amended, Parts I and II (38 U.S.C. Note Chapter 12)
Pension for Non-Service-Connected Disability	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Act of 20 March 1933 (48 Stat.8), as amended (38 U.S.C. 701 et seq.) Act of 11 May 1951 (c.49, 65 Stat.40; 38 U.S.C. 745) Veterans Regulation No. 1(a), as amended, Part III (38 U.S.C. Note Chapter 12)
Vocational Rehabilitation	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Veterans Regulation No. 1(a), as amended, Part VII (38U.S.C. Note Chapter12) Act of 28 December 1950(c.1176, 64 Stat.1121), as amended(38U.S.C. 701a) Title II, Veterans' Readjustment Assistance Act of 1952 (66Stat.663)
Education and Training	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Veterans Regulation No. 1(a), as amended, Part VIII (38 U.S.C. Note Chapter 12) Title II, Veterans' Readjustment Assistance Act of 1952(66 Stat. 663)
Loans	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Title III, Servicemen's Readjustment Act, 1944 (58 Stat.291), as amended (38 U.S.C. 694 et seq.); Title III, Veterans' Readjustment Assistance Act of 1952 (66 Stat.682)
Unemployment Compensation	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Title V, Servicemen's Readjustment Act of 1944 (58Stat.295), as amended (38 U.S.C. 696 et seq.)
Special Housing	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Veterans Regulation No. 1(a), as amended, Part IX (38 U.S.C. Note Chapter 12)
Hospitalization	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 706) Act of 11 May 1951 (c.49, 65 Stat.40; 38 U.S.C. 745); Veterans Regulation No. 6(a), as amended (38 U.S.C. Note Chapter 12)
Domiciliary Care	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 706) Act of 11 May 1951 (c.49, 65 Stat.40; 38 U.S.C. 745); Veterans Regulation No. 6(a), as amended (38 U.S.C. Note Chapter 12)
Out-Patient Medical Treatment	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 706) Veterans Regulations Nos. 6(a) and 7(a), as amended (38 U.S.C. Note Chapter 12)
Out-Patient Dental Treatment	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Veterans Regulation No. 7(a), as amended (38 U.S.C. Note Chapter 12)

INCLOSURE 3 TO AFFIDAVIT

General Discharge

Under Honorable Conditions
from the Armed Forces of the United States of America

This is to certify that

JOHN HENRY HARMON III US51 207 184 Private AUS

was Discharged from the

Army of the United States

on the 2d day of June 1954 under honorable conditions

R L RICHSTATTER
Captain Adjutant General's Corps

DD FORM 1 NOV 48 257A

Special Housing	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Veterans Regulation No. 1(a), as amended, Part IX (38 U.S.C. Note Chapter 12)
Hospitalization	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 706) Act of 11 May 1951 (c.49, 65 Stat.40; 38 U.S.C. 745); Veterans Regulation No. 6(a), as amended (38 U.S.C. Note Chapter 12)
Domiciliary Care	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 706) Act of 11 May 1951 (c.49, 65 Stat.40; 38 U.S.C. 745); Veterans Regulation No. 6(a), as amended (38 U.S.C. Note Chapter 12)
Out-Patient Medical Treatment	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 6, act of 20 March 1933 (48 Stat.9), as amended (38 U.S.C. 706) Veterans Regulations Nos. 6(a) and 7(a), as amended (38 U.S.C. Note Chapter 12)
Out-Patient Dental Treatment	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Veterans Regulation No. 7(a), as amended (38 U.S.C. Note Chapter 12)
Prosthetic Appliances	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 4, act of 19 July 1939 (53Stat.1070), as amended (38U.S.C.706b)
Seeing-Eye Dogs and Mechanical Electronic Equipment	(Eligibility dependent upon entitlement to disability compensation)					Not Eligible	Not Eligible	Not Eligible	Section 1, act of 24 May 1944 (58Stat.226; 38 U.S.C. 251)
Automobiles	(Eligibility dependent upon entitlement to disability compensation for one of specified disabilities)					Not Eligible	Not Eligible	Not Eligible	Section 101, act of 8 August 1946 (60Stat.915; 38 U.S.C.252) Section 1, act of 20 October 1951 (65 Stat.574;38 U.S.C. 252a)
Compensation for Service-Connected Death	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Act of 20 March 1933 (48Stat.8), as amended (38 U.S.C. 701 et seq.) Veterans Regulation No. 1(a), as amended, Parts I and II (38 U.S.C. Note Chapter 12)
Pension for non-Service-Connected Death	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Act of 20 March 1933 (48Stat.8), as amended (38U.S.C. 701 et seq.) Veterans Regulation No. 1(a), as amended, Part III (38 U.S.C. Note Chapter 12)
Burial Expenses	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 17, act of 20 March 1933 (48 Stat.11; 38 U.S.C. 717) Act of 11 May 1951 (c.49,65 Stat. 40;38 U.S.C. 745)
Burial Flags	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 1, act of 22 November 1943 (c.301,57 Stat.590;36 U.S.C. 183)
Benefits Administered by Other Federal Agencies									
Farm and Farm Housing Loans (Department of Agriculture)	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Not Eligible	Eligible	Bankhead-Jones Farm Tenant Act (50 Stat. 522), as amended (7 U.S.C. 1001 et seq; section 2, act of 30 June 1953 (Pub.Law 98, 83d Cong; 67 Stat. 132); Title V, Housing Act of 1949 (63 Stat.432), as amended (42 U.S.C. 1471 et seq; section 3, act of 30 June 1953 (Pub.Law 98, 83d Cong; 67 Stat.132)
Preference in Housing (Defense Rental Areas Division, Office of Defense Mobilization)	Eligible	Eligible	Eligible	Eligible	Eligible	Eligible	Not Eligible	Eligible	Section 4, Housing and Rent Act of 1947 (61 Stat.195), as amended (50 U.S.C. App. 1884; subsection 201(a), Defense Production Act Amendments of 1952 (66 Stat.306); Section 2, Housing and Rent Act of 1953 (Pub. Law 23, 83d Cong; 67 Stat.24))
Homestead, Desert Land and Small Tract Preference (Department of Interior)	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 1, act of 27 September 1944 (c.421,58 Stat.747), as amended (43 U.S.C. 279)
Civil Service Preference (Civil Service Commission)	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 2, Veterans' Preference Act of 1944 (58 Stat.387), as amended (5 U.S.C. 851; section 1, act of 14 July 1952 (c.728,66 Stat.626)
Reemployment Benefits-Federal Employment (Civil Service Commission)	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 9, Universal Military Training and Service Act (62 Stat.614), as amended (50 U.S.C. App.459); Part 35, Civil Service Commission Regulations
Reemployment Benefits-Private Employment (Department of Labor)	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 8, Selective Training and Service Act of 1940 (54 Stat.890), as amended (50 U.S.C. App.308); Section 9, Universal Military Training and Service Act (62 Stat.614), as amended (50 U.S.C. App. 459)
Employment Preference (Department of Labor)	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Title IV, Servicemen's Readjustment Act of 1944 (58 Stat.293) as amended (38 U.S.C. 695 et seq.)
Unemployment Compensation - Veterans of Service after 26 June 1950 (Department of Labor)	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Title IV, Veterans' Readjustment Assistance Act of 1952 (66 Stat.684)
Naturalization Benefits (Department of Justice	Eligible	Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Section 329, Immigration and Nationality Act (66 Stat.250); Act of 30 June 1953 (Pub.Law 86, 83d Cong; 67 Stat.108)
Social Security (Social Security Administration)	Eligible	Eligible	Eligible*	Eligible*	Eligible*	Not Eligible	Not Eligible	Not Eligible	Section 217 Social Security Act, as added by section 105, Social Security Act Amendments of 1950 (64 Stat.512; 42 U.S.C.417), as amended (section 5, Social Security Act Amendments of 1952 (66 Stat.773); section 1, act of 14 August 1953 (67 Stat.580))

State Benefits

The states provide a varying number of veterans' benefits which include bonuses, burial rights, employment preferences and tax benefits. No general rule can be stated as to eligibility requirements for such benefits. Some states require "an honorable discharge"; others require "discharge under conditions other than dishonorable", "service with honor", or "satisfactory service".

* Subject to a review of the facts surrounding the discharge by the agency administering the benefit.

** Subsection 349(a)(3), Immigration and Nationality Act (66 Stat 268) provides in part that a person convicted by a court-martial for desertion in time of war and sentenced to a dishonorable discharge, shall as a result thereof lose his nationality.

*** Resignations for the good of the service are normally accepted as under other than honorable conditions and a discharge (under other than honorable conditions) is issued. Paragraph 4 d, Army Regulations 605-275, dated 27 June 1949, provides, however, that if the Department of the Army determines that the resignation be accepted under honorable conditions, an honorable or general discharge may be furnished. As a matter of policy if it is determined that the resignation is under honorable conditions it is no longer considered a resignation "for the good of the service" but as a resignation under honorable conditions.

**** Section 10 of the act of 5 May 1950 (64 Stat.146; 50 U.S.C. 739) provides for the dropping from the rolls of an officer absent without leave more than three months or who has been convicted by civilian authorities and sentenced to confinement in a Federal or state penitentiary or correctional institution. This office has previously stated that such separation will usually be characterized as under other than honorable conditions.

***** Section 4821, Revised Statutes (24 U.S.C.49) provides that certain soldiers with service in the Army of the United States are eligible for admission to the Soldiers' Home. Section 4822, Revised Statutes (24 U.S.C. 50) provides "the benefits of the Soldiers' Home shall not be extended to any soldier in the regular or volunteer service, convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer or habitual drunkard be relieved without such evidence of subsequent service, good conduct, and reformation of character as is satisfactory to the commissioners".

****** Section 300 of the Servicemen's Readjustment Act of 1944 (58 Stat.286; 38 U.S.C. 693g) provides in substance that discharge or dismissal by reason of sentence of GCM and other discharges and dismissals specified, shall bar all rights based upon the period of service from which discharged or dismissed, under any laws administered by the Veterans' Administration.

[fol. 113] INCLOSURE 2 TO AFFIDAVIT

CORRECTED COPY

CHARACTER OF SEPARATION: (UNDER HONORABLE CONDITIONS) GENERAL

REPORT OF SEPARATION FROM THE ARMED FORCES OF THE UNITED STATES

DEPARTMENT: ARMY

SEPARATION DATA

1. LAST NAME – FIRST NAME – MIDDLE NAME	2. SERVICE NUMBER	3. GRADE – RATE – RANK AND DATE OF APPOINTMENT	4. COMPONENT AND BRANCH OR CLASS
[redacted], John Henry III	US51 207 184	Pvt E-2 28 Feb53	AUS TC

5. SPECIALTY NUMBER OR SYMBOL	RELATED CIVILIAN OCCUPATION AND D O T NUMBER	6. EFFECTIVE DATE OF SEPARATION: DAY	MONTH	YEAR	7. TYPE OF SEPARATION
1824	Cook 02-26.31	2	June	54	Discharge

8. REASON AND AUTHORITY FOR SEPARATION: Sec 301; PL 346

9. PLACE OF SEPARATION: Transfer Point, Camp Pickett, Virginia

10. DATE OF BIRTH: DAY	MONTH	YEAR	11. PLACE OF BIRTH (City and State)	12. DESCRIPTION: SEX	RACE	COLOR HAIR	COLOR EYES	HEIGHT	WEIGHT
17	Jul	31	Houston, Texas	Male	Negro	Black	Brown	5'9"	155

SELECTIVE SERVICE DATA

13. REGISTERED: YES	NO	SELECTIVE SERVICE NUMBER	14. SELECTIVE SERVICE LOCAL BOARD NUMBER (City, County, State)	15. INDUCTED: DAY	MONTH	YEAR
X		50 16 31 304	LB16, New York, New York	31	Oct	52

16. ENLISTED IN OR TRANSFERRED TO A RESERVE COMPONENT: YES [ ] NO [X] — COMPONENT AND BRANCH OR CLASS: Not Applicable — COGNIZANT DISTRICT OR AREA COMMAND

SERVICE DATA

17. MEANS OF ENTRY OTHER THAN BY INDUCTION: [ ] ENLISTED [ ] REENLISTED [ ] COMMISSIONED [ ] CALLED FROM INACTIVE DUTY — Not Applicable

18. GRADE, RATE OR RANK AT TIME OF ENTRY INTO ACTIVE SERVICE: pvt-1

19. DATE AND PLACE OF ENTRY INTO ACTIVE SERVICE: DAY	MONTH	YEAR	PLACE (City and State)	20. HOME ADDRESS AT TIME OF ENTRY INTO ACTIVE SERVICE (St., R F D., City, County and State)
31	Oct	52	New York, New York	Box 77, Bucknell University, Lewisburg, Pa.

STATEMENT OF SERVICE FOR PAY PURPOSES

	A. YEARS	B. MONTHS	C. DAYS
21. NET ( ) SERVICE COMPLETED FOR PAY PURPOSES EXCLUDING THIS PERIOD	Not Applicable		
22. NET SERVICE COMPLETED FOR PAY PURPOSES THIS PERIOD	1	7	2
23. OTHER SERVICE (*Act of 16 June 1942 as amended*) COMPLETED FOR PAY PURPOSES	0	0	0
24. TOTAL NET SERVICE COMPLETED FOR PAY PURPOSES	1	7	2

25. ENLISTMENT ALLOWANCE PAID OR EXTENSION OF ENLISTMENT, IF ANY: DAY / MONTH / YEAR / AMOUNT — Not Applicable

26. FOREIGN AND/OR SEA SERVICE: YEARS 0 — MONTHS 0 — DAYS 0

27. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: None

28. MOST SIGNIFICANT DUTY ASSIGNMENT: 56th Trans Co (Lt Trk) (Army)

29. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known): None

30. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND/OR POST GRAD COURSES SUCCESSFULLY COMPLETED	DATES (From—To)	MAJOR COURSES	SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED
None	None	None	All Basic Training

INSURANCE AND PAY DATA

GOVERNMENT INSURANCE INFORMATION (A) Permanent plan premium must continue to be paid when due or within 31 days thereafter or insurance will lapse. (B) Term insurance not under waiver same as (A) above. (C) Term insurance under waiver – premium payment must be resumed within 120 days after separation. Forward premiums on NSLI to Veterans Administration District Office having jurisdiction over the area shown in Item 47. Forward premiums on USGLI to Veterans Administration Washington 25 D. C. (See VA Pamphlet when paying premiums give full name, address, Service Number, Policy Number(s), Branch of Service, date of separation. Contact nearest VA office for information concerning Government Life Insurance.

32A. KIND & AMT. OF INSURANCE & MTHLY. PREMIUM	32B. ACTIVE SERVICE PRIOR TO 1 APR 1951	MONTH ALLOTMENT DISCONTINUED	33. MONTH NEXT PREMIUM DUE
None Indemnity	[ ] YES [X] NO	Not Applicable	Oct 54

35. TOTAL PAYMENT UPON SEPARATION	36. TRAVEL OR MILEAGE ALLOWANCE INCLUDED IN TOTAL PAYMENT	SHORSING OFFICER'S NAME AND SYMBOL NUMBER
Not Applicable	Not Applicable	Not Applicable

AUTHENTICATION

37. REMARKS (Continue on reverse)

Blood Group 'B'
No days lost under sec 6 (a) App 2b MCM, 1951.
Para 10, AR 615-120 applies
Prepared in SAGO 6 June 1956

SIGNATURE OF OFFICER AUTHORIZED TO SIGN: R L Richstatter

NAME, GRADE AND TITLE (Typed): R. L. RICHSTATTER, CAPT, AGC

PERSONAL DATA

38. V A BENEFITS PREVIOUSLY APPLIED FOR (Specify type) COMPENSATION, PENSION, INSURANCE, BENEFITS, ETC: None — CLAIM NUMBER: None

41. DATES OF LAST CIVILIAN EMPLOYMENT: FROM	TO	42. MAIN CIVILIAN OCCUPATION	43. NAME AND ADDRESS OF LAST CIVILIAN EMPLOYER
None		None	Not Applicable

44. UNITED STATES CITIZEN	45. MARITAL STATUS	46. NUMBER OF GRADE SCHOOL GRAD	46. HIGHEST EDUCATION (Years successfully completed): HIGH SCHOOL GRAD	COLLEGE DEGREE(S)	MAJOR(S) OF STUDY
[X] YES [ ] NO	Single	8	4	4 BA	Political Science

47. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER SEPARATION (St., R F D., City, County and State): 601 E. 226th St. Bronx New York

48. SIGNATURE OF PERSON BEING SEPARATED

DD FORM 214 EDITION OF 1 JAN 1950 — INDIVIDUAL'S COPY TO BE DELIVERED TO THE INDIVIDUAL BEING SEPARATED

Applicant: Yes, sir.

Presiding Officer: How well did you get to know them?

Applicant: I was a kitchen helper and Mrs. Wellman, she was working in the dining room.

Presiding Officer: As a waitress?

Applicant: Yes she was.

Presiding Officer: Mrs. Schotz?

Applicant: She was on the childrens side, and we all ate together and I got to know, I think I had known or got acquainted with most of the employees there.

Presiding Officer: To begin with, you knew both Mrs. Wellman and Mrs. Schotz very well?

Applicant: Yes, sir.

Presiding Officer: In other words, you saw them every day on innumerable occasions?

Applicant: Yes, sir.

Presiding Officer: Did you talk with them or just say, good morning or hello or something like that?

Applicant: I talked to them.

Presiding Officer: You talked to them at some length?

Applicant: Yes, sir.

Presiding Officer: For both years?

Applicant: For the year, I think it was, 1951, I am not certain, sir. No, I will take that back, it was the summer of 1952.

Presiding Officer: In the summer of 1952 you really got to know them pretty good?

Applicant: That is when I first met them.

Presiding Officer: You really got to know them real well?

Applicant: I don't know what their reactions were to me.

Presiding Officer: I realize you don't know what their reactions were to you, what was your reaction?

Applicant: Favorably impressed.

Presiding Officer: On what basis were you favorably impressed, Mr. Harmon?

Applicant: Well, to me, I think both of the ladies in question, they were mothers, and besides returning to their children, each one of them was working also, and I had a very high respect for their capacity and their jobs.

Presiding Officer: What did you have in common to talk about, their children, their work or what?

Applicant: Well, frankly, I should imagine working conditions and plans for the future, I was a college student and they were interested.

Presiding Officer: Did you discuss politics?

Applicant: Yes, I think we did, sir, certainly.

Presiding Officer: Did you discuss communism?

Applicant: I don't recall, sir.

Presiding Officer: You don't remember?

Applicant: No, sir.

Presiding Officer: You remember that you discussed politics, you don't remember whether you discussed communism?

Applicant: When I say that I remember that we discussed politics, I think it is very seldom that I got into a certain discussion, but eventually I would get into a discussion of politics.

Presiding Officer: In other words, you enjoyed talking about politics?

Applicant: Yes, sir.

Presiding Officer: Including the National Labor Party, I suppose?

Applicant: I am not familiar with the National Labor Party, sir.

Presiding Officer: I mean, the American Labor Party?

Applicant: Yes, sir, I did register to vote for the American Labor Party in 1952.

Presiding Officer: And, you discussed the American Labor Party aims with Mrs. Wellman and Mrs. Schotz?

Applicant: No, sir, I did not.

Presiding Officer: You didn't?

Applicant: No, sir.

Presiding Officer: Now, on the basis of knowing these two women as well as you told the board you did, when it came to your attention through the newspaper that their husbands had been indicted under the Smith Act, you thought some money should be raised for their defense, is that correct?

Applicant: Yes, sir, I thought that was the most tangible way to show any concern.

Presiding Officer: Because you knew the women?

Applicant: Yes, sir, primarily.

Presiding Officer: No other reason?

Applicant: No, sir.

Presiding Officer: You got the word that they were indicted from the newspaper?

Applicant: That is correct.

Presiding Officer: Nobody else?

Applicant: No, sir.

Presiding Officer: Or from the women themselves?

Applicant: No, sir.

Presiding Officer: From the newspaper, what were they indicted for, Mr. Harmon?

Applicant: I think they were indicted for violation of the Smith Act, sir.

Presiding Officer: Did you know what the Smith Act was?

Applicant: I think it is an act having to do with advocating violence to overthrow the United States Government.

Presiding Officer: You did know what the act was?

Applicant: Yes, sir.

Presiding Officer: You were well aware of what the act was, weren't you?

Applicant: No, I couldn't say that because I never read the act in its entirety, but through the newspapers I was familiar with the general aims and purpose.

Presiding Officer: Where did you get the idea what the Smith Act was, just from reading newspapers?

Applicant: Yes, sir, I would say so even though I was a student of Political Science at that time, no reason to study that.

Presiding Officer: In what university were you a student of Political Science?

Applicant: Bucknell University.

Presiding Officer: Now, Mr. Harmon, knowing what the Smith Act was, and knowing that these two men had been indicted by a Federal Grand Jury knowing that the Smith Act—indicted for violation of the Smith Act, which indicated a possible connection with some effort to overthrow the government, you just went out to help raise money for no other reason except that you knew the two women?

Applicant: Yes, sir. Secondly, for the fact that I strongly believe that when a person is accused of something, under our laws he is judged innocent until proven otherwise, even if an indictment is handed down against him.

Presiding Officer: That is correct. I think everybody in the United States realizes that an individual is not guilty until proven otherwise, but at the same time have you ever contributed to anybody elses defense?

Applicant: No, sir, I have not.

Presiding Officer: The sole reason for your endeavoring to raise funds was, in spite of the fact that you knew what the Smith Act was, and these two men were indicted under that Act, your sole reason for raising funds was because you knew their wives?

Applicant: Yes, sir, that was my sole reason.

Presiding Officer: Nobody approached you to do it?

Applicant: No, sir.

Presiding Officer: How much money did you raise?

Applicant: I don't recall that I raised any, sir. I suggested to Roy Meador who was a chef when I was at Camp Lakeland in 1952, and to Ray Staleman who was a waiter in the dining room, that perhaps something ought to be done to help the people out; to help Gertrude and Peggy

out, and the only way—I could see no way of offering any help except through financial support, even though limited, and I asked for no specific contribution and set no limit on the contribution.

Presiding Officer: What did you do in connection with soliciting funds?

Applicant: My soliciting was confined to correspondence, sir.

Presiding Officer: With just two people?

Applicant: That's right.

Presiding Officer: Those were the only two?

Applicant: Yes, sir.

Presiding Officer: You got no money?

Applicant: I don't know, sir, I didn't send in any money for them, I suggested that if they felt that something should be done to help these people that they would go ahead and send in a financial contribution.

Presiding Officer: In 1949, were you employed by the Detroit Urban League?

Applicant: Yes, sir, I was.

Presiding Officer: In what capacity?

Applicant: I was employed as a camp counselor, sir.

Presiding Officer: In the capacity as camp counselor, what did you do?

Applicant: I had a cabin of thirteen children ranging in age from eight or nine to fourteen years old, and it was my responsibility to them to provide recreation outlets for them and otherwise to follow the program set down by the camp director.

Presiding Officer: You have told me that you did register to vote for the American Labor Party in New York City, did you not?

Applicant: Yes, sir.

Presiding Officer: What year was that?

Applicant: This was in 1952, sir.

Presiding Officer: Did you solicit any funds for the defense of Mr. and Mrs. Rosenberg?

Applicant: No, sir.

Presiding Officer: Did you at any time make any remarks to anybody either verbally or in writing relative to the Rosenberg case?

Applicant: I don't recall, sir.

Presiding Officer: Were you approached by anybody in connection with the case to help in any way, shape or form?

Applicant: I can't say that I was, sir.

Presiding Officer: You say you were introduced to Mr. Sol Vail who was the manager of Camp Lakeland by your father?

Applicant: Yes, sir.

Presiding Officer: Was your father a member of the Communist Party?

Applicant: Sir, I could not say, I don't know my father's politics.

Presiding Officer: You don't?

Applicant: No, sir.

Presiding Officer: Was your father a member of any communist front organization?

Applicant: Frankly, sir, I couldn't say and be honest as to what organizations my father belonged to or not. I respect him as my father, and we have talked and I have never asked him about his political leanings one way or the other because he is my father, and I am loyal to him, I just don't want to say.

Presiding Officer: Is your father a member of the International Workers Order?

Applicant: I don't know, sir.

Presiding Officer: How did your father become acquainted with Mr. Vail?

Counsel: Excuse me, sir, I don't intend to interrupt the questioning, but I would like to get this in the record, if I may. Mr. Harmon has told me that the only thing about this proceeding which disturbs him, and it disturbs him because of his affection and feeling for his father, was the fact that he had been in a position where he would have to answer questions concerning his father and stepmother,

whom he loved very, very, much. I told him very simply that if you don't know about any specific matters, say you don't know, but if it is a question where you do know and you have an exception to making an answer to the question, state what your exception is to not making the answer. I would like my client to feel that way, and I would like the board to understand I feel that way. In this country, somehow in my mind, we always talk about our parents, but in the Soviet Union they talk about their fathers and their mothers, and I think perhaps that is what Mr. Harmon is a little bit concerned about.

Presiding Officer: Have you finished?

Counsel: Yes, sir.

Presiding Officer: Have you ever been a member of the International Workers Order?

Applicant: You ask me if I was a member?

Presiding Officer: Yes?

Applicant: No, sir.

Presiding Officer: Were you ever associated with persons who were communists?

Applicant: It is quite possible that I have, sir.

Presiding Officer: You say you don't know, is that it, or is it possible, yes or no, or don't you know?

Applicant: I would say that I don't know.

Presiding Officer: You don't know?

Applicant: That's right.

Presiding Officer: Were you ever associated with people who were members of a communist front organization?

Applicant: Again I would have to say, I don't know, sir.

Member: Mr. Harmon, did I understand you correctly when speaking of soliciting of these funds, that the soliciting of these funds was through correspondence?

Applicant: Yes, ma'am.

Member: In what way? What did you do?

Applicant: I wrote to Roy Meader and Ray Staleman and mentioned the fact that I had seen where Peggy Well-

man's husband and Gertrude Schotz's husband were indicted under the violation of the Smith Act, and having known them, the two women, and respected them, I suggest that perhaps by business connection, had the facilities there in the camp, we might express our friendship toward them by some type of financial contribution.

Member: I was under the impression those two people were at Camp Lakeland with you, I didn't know you had to write to them?

Applicant: You see, I wrote to them, I think it was after I was inducted, yes, ma'am.

Member: After that, but not at the time you were there?

Applicant: No, sir.

Member: Were they the only ones you wrote to?

Applicant: Yes, ma'am, that's right.

Presiding Officer: How much money did you personally contribute to the fund of Mr. Wellman and the other man?

Applicant: I believe it was two or three dollars, sir.

Presiding Officer: Only two or three dollars?

Applicant: Yes, sir.

Member: In this letter that you wrote to Mr. Meador, where did you say the money was to be sent?

Applicant: I think I suggested that it be sent to Mr. Vail's Office. Sol Vail was the manager of the camp, and he could forward it on to Peggy Wellman and Gertrude Schotz because he hired them.

Presiding Officer: How did you happen to decide to have it sent to Mr. Vail, maybe he wasn't interested in the matter?

Applicant: That is quite possible, sir. If a letter was sent to him with a notation that it be forwarded, I was sure that he would have done it.

Presiding Office: That is all the questions by the members of the Board, Mr. Shapiro, have you anything further to offer?

Counsel: I would like to ask a couple other questions of Mr. Harmon, if I might be permitted to do so. Mr. Harmon,

I think Colonel Crane asked you whether or not, perhaps I better paraphrase this to ge the point, perhaps your sole and exclusive reason for becoming interested in the defense of the husbands of these two women you had been very well acquain.ed with at Camp Lakeland was the fact of your friendship. Now, isn't it also true that it is part or parcel of that reason you had some pretty serious opinions as to the validity or constitutionality of the Smith Act prosecutions?

Applicant: Yes, sir, that is quite true. I have personally contended that the Smith Act was, I would say, unconstitutional and I think I have found support by jurors, and I think when the Smith Act was brought before the Supreme Court there were dissenting opinions handed down.

Counsel: Mr. Harmon, let me ask you this question, you contended this, where did you contend this, under what circumstances?

Applicant: I think at home even, I discussed it with my father, had a discussion with my father on the Smith Act, this is unconstitutional.

Counsel: Why do you think it is unconstitutional, Mr. Harmon?

Applicant: I feel that because in a democracy we can have all types of varying opinions, and a democracy group should be strong enough to stand even dissension. We have laws on overt acts, and an expression of constitutionality where people can be judged with critical opposition.

Counsel: If I understand you, Mr. Harmon, you felt the Smith Act was unconstitutional instead of a punishing act or attempts to commit acts, it was actually a punishing proposition, is that correct?

Applicant: Yes, sir, I think that is true.

Counsel: And, that was the reason you felt that the convictions were wrong?

Applicant: Surely.

Counsel: Do you think that this attitude of yours was entirely or part of the consideration on your part for you

to come to the assistance of the husbands of these women aside from the question of friendship?

Applicant: Yes, sir, because here if I disagree with the constitutionality of the Smith Act—here was a concrete example where I could express my disagreement legally and constitutionally because it is an inherent prerogative, a person has a right to defend.

Counsel: Do you know of any law, regulation, or statute which prohibits or restricts any individual from attempting to solicit funds or sums of money for individuals accused of any kinds of a crime no matter how heinous?

Applicant: No, I don't.

Counsel: Mr. Harmon, do you have anything further to offer?

Applicant: No, I haven't.

Presiding Officer: Any questions by the members of the Board?

Members: (No questions).

Counsel: Mr. Harmon, when you were at Indiantown Gap, say the night before you were awakened by the gentlemen from the CIC, had you any idea that anything was going to happen by reason of your thoughts, attitude, or association or activity of any kind?

Applicant: I had none whatsoever. I might explain, I don't know if I have before, but I was asked, oh, I think in January or February of 1953, just before I finished basic training if I would like to put in an application for training as a Public Information Specialist in the Army, and I hopped to the idea, and on the application blank I had to fill out, I had to put down the past five years employment and give character references, I did so without a second thought and then I was visited by these gentlemen.

Counsel: It came like a bolt out of the blue?

Applicant: Very definitely, sir.

Counsel: What time of the night was it that you were awakened?

Applicant: Between ten and twelve o'clock, I was scheduled to go to work cooking at one o'clock.

Presiding Officer: Mr. Shapiro, your question was what time of the night it was?

Counsel: He tells me that it was in the day time.

Presiding Officer: That is what is not clear in my mind, counsel, just what time of the night—what was the answer?

Counsel: Close to noon. Were you sleeping at the time, Mr. Harmon?

Applicant: Yes, sir, my Commanding Officer awakened me and I thought he was getting me up to go to work. I got up and started to put my clothes on, and these gentlemen walked in and the Sergeant stood in the door, and they stuck me against the wall beating me down, I didn't know what to think.

Counsel: Mr. Harmon, were you afraid?

Applicant: I was very apprehensive, yes, it is the same as when a policeman stops you on the road, oh, oh, done something wrong, and these gentlemen presented badges.

Counsel: Where were you taken by these gentlemen after they searched you?

Applicant: I was taken to G-2 Headquarters.

Counsel: Were you taken into any sort of a room or building?

Applicant: I was taken into a room with no ventilation, fan going I believe, and there was a couple table lamps on, and I don't know whether there was a stenographer over there, but Mr. Smith, who was head of the intelligence outfit was there and about four or five other men with him, civilian folks, and a Lieutenant who, I guess, was in charge of G-2 operations there.

Counsel: You say the questions came at you pretty fast?

Applicant: Yes, sir, they did.

Counsel: Do you think if you had an opportunity to have carefully considered the questions and your answers to the questions, if you had done so in a calm and deliberate atmosphere rather than through fear, do you believe you would have answered as you did on the investigation report?

Applicant: I think if I had time to I would have given more or less similar responses that I had given in the file with the AGO.

Counsel: Weren't you also a little bit probably resentful?

Applicant: Yes, I was here where these gentlemen were impuning my loyalty, you are suspected of having had subversive associations, I believe that is what the gentlemen said, and then we got down to G-2 and one of the gentlemen said, how long have you been a courier for Soviet Union. Gee whiz. . . .

Counsel: As a matter of fact, you were rather angry?

Applicant: Yes, I was very much so.

Counsel: In a sense when you felt your loyalty was impuned, you said, in effect, as I understand it, I am just not going to cooperate, isn't that, in effect, just what you did do?

Applicant: I don't think so.

Counsel: Well, let's take it all together then, the feeling of resentment, your own fear, and because you felt you were unprepared, as I understand, led you to answer the questions in the manner and in the way you did?

Applicant: Yes, it did.

Presiding Officer: Mr. Harmon, in connection with the contributions for the defense of Mr. Wellman and the other man, you knew that there was no wrong in contributing and you so answered your attorney, is that right?

Applicant: Yes, sir.

Presiding Officer: Have you ever tried to collect funds in defense of anybody else?

Applicant: No, sir, I have not.

Presiding Officer: Mr. Harmon, your counsel, Mr. Shapiro, has asked you if you were angry because your loyalty had been impuned, is that correct?

Applicant: Yes, sir.

Presiding Officer: Your answer was what?

Applicant: I was angry.

Presiding Officer: You were angry?

Applicant: Yes, sir.

Presiding Officer: So, you decided not to cooperate, I believe?

Applicant: Surely, sir, I was unconsciously responding

Presiding Officer: Natural reaction?

Applicant: Yes, sir.

Presiding Officer: Your natural reaction, when your loyalty was impuned, is not to cooperate and apparently you denied any allegations, is that right? Instead of denying allegations of disloyalty, you just did not cooperate, is that what you are telling me?

Applicant: No, sir, I am not saying that, I don't believe that I am, I feel that if someone questions my loyalty I can explain my stand and my beliefs in the principles of my country.

Presiding Officer: Why didn't you explain?

Applicant: I didn't believe then, sir, that I was given a fair opportunity to do so.

Presiding Officer: Your defense for not explaining is that you were not given a fair opportunity, is that it?

Applicant: Yes, sir.

Presiding Officer: Any other questions by the members of the Board?

Members: (No questions).

Presiding Officer: Does counsel have anything further to offer?

Counsel: The question of resentment, was that a sole consideration or merely part of the basic reason for your answering the way you did?

Applicant: Well, I think I tried to bring out before, for one thing I was apprehensive with regard to all this interrogation, secondly, I was resentful, certainly, and in the third place I had no one with whom to seek advice, and they had seven or eight men arrayed against me, and I didn't feel capable of giving them the most correct answers.

Counsel: As I understand it then, your resentment was only part of the consideration for your answering the questions in the manner and the way you did?

Applicant: Yes, sir.

Presiding Officer: Mr. Harmon, when these gentlemen questioned you, were you advised of your rights to have counsel?

Applicant: No, sir, I was not at first. I was later informed after the interrogation had begun that I said that I would like to have counsel, and this Mr. Smith, who I again took to be the head of CIC delegation, he said, yes, Mr. Harmon, you can have counsel, but it would have to be approved by the Army, I don't know if these are his exact words or not.

Presiding Officer: Was the questioning stopped?

Applicant: No, sir, the questioning continued.

Presiding Officer: What were you apprehensive of?

Applicant: Well, sir, when someone walks in with a group of men, walks into the room where you had just been awakened, as I explained, by my Commanding Officer . . .

Presiding Officer: Was your Commanding Officer present?

Applicant: Yes, sir, I don't know how many gentlemen from the CID and a Lieutenant from G-2, a Sergeant with a .45 pistol strapped to his hip, and why someone should come into my room with weapons, I couldn't understand, I was apprehensive.

Presiding Officer: You were apprehensive for fear they would shoot you?

Applicant: I can't explain my subconscious reaction at the time.

Presiding Officer: You were just apprehensive?

Applicant: That is correct, sir.

Presiding Officer: Please proceed, Mr. Shapiro?

Counsel: I have nothing further, I just have one short closing statement.

Presiding Officer: Will you proceed with your closing statement?

Counsel: I think we have established one thing here gentlemen and that is this. Mr. Harmon, while he was in

the Army committed no unlawful act or committed any violation of any Army Regulation. Before he was in the service and prior to his induction he committed no unlawful act or committed no crime. He has political opinions and I don't agree with them and many other people don't agree with them, but in this country, as I understand it, you don't have to agree with a persons political opinions.

Now, what happens when a man gets an undesirable discharge. The Army itself has recognized under SR-600-220-1 when it provides a form for the individual who accepts an undesirable discharge; that the individual who gets one is going to be very seriously handicapped, not only in the fact that he is going to be denied very, very, substantial benefits and rights, but also in addition he is going to live with it the rest of his life with the stain or badge of dishonor of being undesirable to the Armed Forces of the United States.

Mr. Harmon has always wanted to be a lawyer. I am a member of the bar of the State of New York and Mr. Harmon will never become a lawyer under the bar of the State of New York or any other State. I feel as if this board should grant him an honorable discharge. Today, if he went before any character committee of the bar association of the City of New York or State of New York, and from my own experience I will submit to this board he will never get past that committee merely because of the fact that charges were brought against him. The fact is that charges were brought against him and no matter what the result, that is enough to keep you out. It is pretty hard to disbar somebody once he is in and once he gets by that committee and is appointed to the bar.

There are other things that Mr. Harmon would like to do, he might want to teach or he might want to go into public service, or he might, for example, want to do welfare work or wants to study to pursue some course of endeavor, and now because he has this undesirable discharge from the Army of the United States, and in every single walk of life this badge of dishonor is going to follow him

and for what, for not a single wrong act that the man committed.

His service record indicates that the only known comments about his character and about his efficiency were marked excellent, nothing else, and I respectfully submit that if Mr. Harmon had enlisted in the service or if he was an officer, which certainly is a privilege to be a member of the Armed Forces as an enlisted man or as an officer, this board here or the Secretary of the Army, or the Government could throw him out of the Army at any time under any conditions it wanted to, but something happened here that was a lot more serious, Mr. Harmon was inducted into the Army and because he was inducted he would have gone to jail if he didn't serve, and he was told, Mr. Harmon, you have got to serve your country, and he was brought in and was inducted into the Armed Forces, and it was no privilege, it was an obligation and I believe he tried to fulfil this obligation to the best of his ability for a man to be inducted into the Armed Forces, and then because he has been unpopular in his associations with people and having political opinions to be thrown out of the Army before his time of service was up, and being barred for the rest of his life because of no unlawful act, but because of political opinions, then I respectfully submit that we have come a long way.

I am going to say this because I frankly feel more than anything else, the question here is a question of responsibility to all the members of the Board, and I say that in all seriousness and whatever I say to you gentlemen is of concern or interest to this nation, or you wouldn't be where you are now. I know that you are very much concerned and I submit to you gentlemen that in the battles for this country as we know it, is a democracy for the greatest nation in the world, a nation that holds out to the entire world because we believe in it, and because we believe in freedom, equality, justice, and we battled for that and for the things which make our country the greatest thing in the world. We went and fought on Bataan and Corregidor and fought to the end of the war for this country.

I think it is a question of this man having committed no wrong, no unlawful act whatsoever, and I believe that this board must grant him in all conscience and in all decency the kind of discharge he was entitled to by reason of the quality and character of his service to his country. His service as marked on the service record was excellent and he deserves nothing less than an honorable discharge. Thank you, sir.

Presiding Officer: Does the applicant, Mr. Harmon, have anything further to offer?

Applicant: Nothing further, sir, except to say that I feel that within the limit of the regulation, this Board has accorded me all fairness at its disposal.

Presiding Officer: Anything further from counsel, Mr. Shapiro?

Counsel: No, sir.

Presiding Officer: Anything further from associate counsel, Mr. Heller?

Associate Counsel: No, sir.

Presiding Officer: Anything further from applicant, Mr. Harmon?

Applicant: No, sir.

Presiding Officer: Are there any further questions from any member of the Board?

Members: (No questions).

Presiding Officer: If there is nothing further from applicant, Mr. Harmon, counsel, Mr. Shapiro, associate counsel, Mr. Heller, and nothing further from any member of the Board, the Board will be closed.

(This concludes the testimony taken on 22 October 1954)

Reviewed by:

EDWIN F. MOODY
Lt. Col., Artillery
Board Member
Army Discharge Review Board
Date: 1 Nov. 1954

Defendant's Exhibit 2

Filed in Open Court, November 28, 1955

HEADQUARTERS 5TH INFANTRY DIVISION

Indiantown Gap, Military Reservation,
Indiantown Gap, Pennsylvania

I have been advised of my rights under Article 31, Uniform Code of Military Justice by 1st Lt. Howard J. Neff and

(a). I understand that I cannot be compelled to answer any question or questions that may tend to incriminate me;

(b) I acknowledge that I was informed of the nature of the accusation or offense concerning which I am about to be questioned; and I have been advised and I understand that I do not have to make any statement regarding the offense of which I am accused or suspected.

(c) I further understand that anything I may say or write can be used against me if I should be tried by court-martial; and

(d) I further understand that I may not be compelled to make any statement or to produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade me.

Question:-Are you now or have you ever been a member of the Communist Party, USA?

Harmon: No, I am not nor have I ever been a member of the Communist Party, USA.

Question: Are you now or have you ever been a member of any Communist organizations?

Harmon: I refuse to answer that question under Article 31, on the grounds of possible self-incrimination.

Question: Are you now or have you ever been a member of any organization, association, movement, group or combination of persons which advocates the overthrow of our Constitutional form of Government?

Harmon: I refuse to answer that question under Article 31, on the ground of possible self-incrimination.

Question: Are you now or have you ever been a member

of an organization, association, movement, group or combination of persons which has adopted the policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the constitution of the United States?

Harmon: I refuse to answer that question under Article 31, on the grounds of possible self-incrimination.

Question: Are you now or have you ever been a member of any organization, association, movement, group or combination of persons which seeks to alter the form of government of the United States by unconstitutional means?

Harmon: I refuse to answer that question under Article 31, on the grounds of possible self-incrimination.

Question: Are you or have you ever knowingly and willingly been a member of any organization, association, movement, group or combination of persons which to your knowledge has engaged in subversive activity of any nature?

Harmon: To the best of my knowledge I have not.

Question: Have you ever given financial support to any Communist organization?

Harmon: I refuse to answer that question under Article 31, on the grounds of possible self-incrimination.

Question: Do you knowingly and willingly support the platform of the Communist Party?

Harmon: I refuse to answer that question under Article 31, on the grounds of possible self-incrimination.

Question: Are you a member of any Communist cell or unit?

Harmon: No, I am not.

Question: Have you at any time solicited funds for the Communist Party?

Harmon: No, I have not.

Question: Have you at any time solicited funds for any Communist cause?

Harmon: To the best of my knowledge I have not.

Question: Have you at any time solicited funds for any organization which advocates the violent overthrow of the United States Government?

Harmon: To the best of my knowledge I have not.

Question: Have you at any time solicited funds to assist any person known by you to be a Communist?

Harmon: I refuse to answer that question under Article 31, on the grounds of possible self-incrimination.

Question: Do you make reports of any nature to any Communist organization?

Harmon: To the best of my knowledge, I do not.

Question: Would you, in defense of the United States of America, bear arms against and fight against any Communist dominated enemy in time of national emergency?

Harmon: If drafted by the armed service of the United States, I would.

Question: Have you ever at any time taken any pledge of allegiance to the aims and policies of the Soviet Union?

Harmon: To the best of my knowledge, I have not.

Question: Have you ever in any manner pledged yourself to defend the Soviet Union?

Harmon: To the best of my knowledge I have not.

Question: Do you have any statement you would like to make Pvt. Harmon?

Harmon: Not until such time as any charges have been brought against me or I have been brought before an Army Courts Martial, I have no statement to make.

Question: Do you know a person by the name of Martin Silverman?

Harmon: Yes, I do.

Question: Where did you first meet Martin Silverman?

Harmon: I first met Martin Silverman, to the best of my knowledge, at Camp Lakeland, where I was employed in the Summer season of 1952.

Question: Where does Martin Silverman live?

Harmon: To the best of my knowledge Martin Silverman lives at 634 Franklin Place, Philadelphia, Pennsylvania.

Question: To what extent have you associated with Martin Silverman?

Harmon: Only to the extent that I met him and his wife in the camp mentioned and I have visted them on

several occasions only on social visits. Our friendship had not reached very intimate proportions.

Question: Who is Martin Silverman's wife?

Harmon: To the best of my knowledge Martin Silverman's wife is Mrs. Alice Silverman.

Question: Do you know Ben Feldman?

Harmon: Yes, I do.

Question: Where and when did you have occasion to meet Ben Feldman?

Harmon: To the best of my knowledge I first met Ben Feldman at Camp Lakeland where I was employed during the Summer season of 1951.

Question: Where does Ben Feldman reside?

Harmon: To the best of my knowledge I do not know, only that I believe he resides in New York City, other than that I do not know.

Question: Who is Ben Feldman's wife?

Harmon: To the best of my knowledge Ben Feldman's wife is Edna Feldman.

Question: What is the extent of your association with Ben and Edna Feldman?

Harmon: We were friends, not of an intimate nature, whose acquaintance I had made only at the times mentioned and whom I have had occasion to see in New York once or twice, I believe.

Question: Who is Peggy Wellman?

Harmon: Peggy Wellman is a lady whom I met at Camp Lakeland in the Summer season of 1952. She was head waitress there, I believe.

Question: Do you have reason to believe that Peggy Wellman's husband was arrested for violation of the Smith act?

Harmon: I have reason to believe, to the best of my knowledge, that such was the cause of his arrest as gathered from the newspapers.

Question: Who is Peggy Wellman's husband?

Harmon: To the best of my knowledge, I do not recall Peggy Wellman's husband's name.

Question: When and where did you first meet Peggy Wellman's husband?

Harmon: To the best of my knowledge I have never met Peggy Wellman's husband.

Question: Where does Peggy Wellman reside?

Harmon: To the best of my knowledge Peggy Wellman resides in Detroit, Michigan.

Question: Who is Gertrude Schatz?

Harmon: Gertrude Schatz was a lady whom I met at Camp Lakeland in the Summer season of 1952.

Question: Was Gertrude Schatz employed at Camp Lakeland in 1952?

Harmon: To the best of my knowledge she was employed at Camp Kinderland which is adjacent to Camp Lakeland.

Question: Where does Gertrude Schatz live?

Harmon: To the best of my knowledge Gertrude Schatz lived in Detroit, Michigan.

Question: Who is Gertrude Schatz' husband?

Harmon: To the best of my knowledge I do not recall Gertrude Schatz' husband's name.

Question: Where did you first meet the husband of Gertrude Schatz?

Harmon: To the best of my knowledge I have never met the husband of Gertrude Schatz?

Question: Do you have any reason to believe that the husband of Gertrude Schatz was arrested for a violation of the Smith Act?

Harmon: To the best of my knowledge such was the cause of his arrest as gathered from reports in the newspapers about same.

Question: Have you ever solicited funds in behalf of and in order to assist the husbands of Peggy Wellman and Gertrude Schatz?

Harmon: To the best of my knowledge I have suggested that something be done to assist Peggy Wellman and Gertrude Schatz who, being the wives respectively, the husbands' first names I do not know, it may be considered that

I have in some manner solicited funds for the assistance of their husbands.

Question: From whom have you solicited funds in order to assist the husbands of Peggy Wellman and Gertrude Schatz?

Harmon: I have not, or to the best of my knowledge I have not, solicited funds from anyone. My own efforts in behalf of Peggy Wellman and Gertrude Schatz were to suggest to Roy Meador and Roy Stollerman that perhaps something should be done to aid Peggy Wellman and Gertrude Schatz.

Question: Did you ever at any time set a quota in dollars as a possible goal to be reached in seeking aid for the Wellmans' and Schatz'?

Harmon: At this time I do not recall.

Question: Is it possible that you set a dollar goal in your efforts to assist the Wellmans' and Schatz'?

Harmon: It is possible that I may have set a goal in dollars and cents in my suggestion for aid to Peggy Wellman and Gertrude Schatz.

Question: To whom or to what office were the contributions to be sent in the drive to assist the Wellmans and the Schatz'?

Harmon: There was no designation as to whom or to what office aid might be sent to assist Peggy Wellman and Gertrude Schatz; insofar as I was chairman of the Lakeland Staff organization in the Summer season of 1952 and insofar as Sol Vail was Director of Camp Lakeland in that same season, it is possible that persons to whom such suggestions may have been made might have considered myself or Sol Vail, at his Camp Lakeland Office in New York City, to be the persons to whom aid might be sent.

Question: By aid, do you mean monetary contributions?

Harmon: Specifically monetary contributions.

Question: Who is Rachael Johnstone?

Harmon: To the best of my knowledge I do not know this person Rachael Johnstone.

Question: Do you have knowledge to the effect that your father, John Henry Harmon, Jr., is a Communist?

Harmon: To the best of my knowledge I have no such ideas concerning Communist implications on the part of my father, John Henry Harmon, Jr.

Question: Is your father, John Henry Harmon, Jr., a member of any Communist organizations?

Harmon: To the best of my knowledge, I do not know.

Question: At this time would you bear arms against any country who may have caused the United States to be attacked and which is Communist influenced?

Harmon: Although your question is vague, I think I understand it. If so ordered by my superior officer or officers, I would.

Question: Would you follow the orders of your superior officers for patriotic reasons or merely to prevent disciplinary action against you.

Harmon: I consider the question vague and would only say that it would have to be more specific.

Question: In time of National emergency, would you in defense of the United States of America fight against a Communist dominated enemy or a Communist influenced enemy because of patriotic motives or merely to prevent yourself from becoming a subject of disciplinary action?

Harmon: I refuse to answer that question.

Question: Why?

Harmon: Under Article 31, on the grounds of possible self incrimination with the added statement that I consider patriotism to be inherent in a man's personality until such time as that patriotism is shown to be false.

Question: Where is Camp Lakeland?

Harmon: To the best of my knowledge Camp Lakeland is located about twelve or thirteen miles from the city of Poughkeepsie, New York. The Postal address to such camp being Hopewell Junction, New York.

Question: Are Communist teachings propagated at Camp Lakeland?

Harmon: I refuse to answer that question under Article 31, on the ground of possible self-incrimination.

Question: What party, association, group or combination of persons sponsor Camp Lakeland?

Harmon: To the best of my knowledge I do not know.

No threat, coercion, or promises, or unlawful influence or inducement has been made to me and with full knowledge of my rights concerning self-incrimination, I voluntarily make the above statement.

To show that I know and understand the foregoing I place my signature here:

The foregoing statement is true and correct to the best of my knowledge.

JOHN HENRY HARMON, III
John Henry Harmon, III
Pvt.-2 US 51207184
Co. D, 11th Inf. Reg.
5th Inf. Div.

Subscribed and sworn to before me at Indiantown Gay Military Reservation, Pennsylvania, this 7th day of May, 1953.

HOWARD J. NEFF
Howard J. Neff
1st Lt. Hq. 5th Inf. Div.
Auth. to act as Notary
Art. 136, UCMJ, 1951

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202 Filed November 29, 1955

Amendment to Answer

Pursuant to leave granted by order of this Court on November 28, 1955, defendant herein files the following amendments in substitution for paragraphs 10 and 17 of his answer:

10. Defendant denies the allegations of paragraph 10 of the complaint, and alleges that plaintiff's discharge certifi-

cate recited that the authority for his discharge was AR 615-370, but that in fact plaintff was discharged under the authority of Department of Defense Directive 5210.9 dated April 7, 1954.

17. Defendant denies the allegations of paragraph 17 of the complaint except that he admits that plaintiff's service record was marked "excellent" as to character and efficiency only for the periods November 12, 1952 to July 24, 1953; and August 2, 1953 to 24 April, 1954; but that for the balance of plaintiff's military career his service record was marked "unknown" as to character and efficiency.

/s/ WARREN E. BURGER
Assistant Attorney General

/s/ EDWARD H. HICKEY
/s/ DONALD B. MACGUINEAS
/s/ HOWARD E. SHAPIRO
Department of Justice
Attorneys for Defendant.

Let this be filed:
LUTHER W. YOUNGDAHL

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203 Filed January 24, 1956

Memorandum

This cause came on to be heard on cross-motions for summary judgment.

Plaintiff was inducted into the Army on October 31, 1952, under the Universal Military Training Law of 1948. On February 9, 1954, he was ordered to reply to certain derogatory information which the Army had received about him. On March 11, 1954, plaintiff replied to questions concerning allegedly subversive activities in which he was involved in 1949, 1951, and 1952, such as employment at Camp Lakeland, with the Detroit Urban League, registering to vote with the American Labor Party in New York, and solicit-

ing funds for defense of persons indicted under the Smith Act. Plaintiff's father and stepmother were alleged to be subversive.

Save for plaintiff's continuing association with his parents and for writing one letter requesting contribution for the legal defense of two persons indicted under the Smith Act, all charges against plaintiff were based on conduct antedating his induction into the Army.

On the basis of these facts the Army informed plaintiff,
on April 2, 1954, that although he would be retained
204 in the Army, he would not be promoted; that he
would not be discharged as disloyal or subversive, but he would be assigned to non-sensitive duties; and that upon completion of his term of service, he would be given a discharge relative to the type of service rendered as of the date he became eligible for separation.

On April 7, 1954, the Secretary of Defense issued a Department of Defense Directive, number 5210.9, which modified existing regulations of the Armed Services so as to make the civilian security program for government employees apply to the military. Cases previously cleared were ordered reviewed and on May 26, 1954, the Adjutant General informed plaintiff's Commanding Officer that he would be discharged with an Undesirable Discharge under the provisions of Army Regulation No. 615-370, although the discharge now appears to have been made under 5210.9, i.e., that retention of plaintiff was inconsistent with the interests of national security. On June 2, 1954, plaintiff was discharged from the Army.

Plaintiff then applied unsuccessfully to the Army Discharge Review Board and the Army Board for the Correction of Military Records to have the character of his discharge changed from Undesirable on the ground that his services both as to character and efficiency had been rated as excellent throughout his entire army life. After plaintiff requested the Secretary of the Army to award him an

honorable discharge, his case was reopened by the Army Board for Correction of Military Records but relief was denied.

In his complaint, plaintiff states that he is not now and never has been a member of the Communist Party or any of its front organizations, or of any organization which has engaged in subversive activities of any kind. Plaintiff asserts that he has always been "unswervingly loyal to the Government of the United States." To this the government responds that for lack of knowledge and information sufficient to form a belief, it denies plaintiff's assertion, but in its argument it concedes that it has never found plaintiff either disloyal or loyal. Since the position of the government is that plaintiff was dismissed under Directive 5210.9 which requires no finding of disloyalty, it maintains that assertions of loyalty are not material to the legal issues raised by the motions for summary judgment.

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The Government concedes that during the entire period of plaintiff's military service he received an excellent rating both as to character and efficiency.

The authority to prescribe conditions under which a soldier shall be discharged from service has been vested by the Congress in the Secretary of the Army. 10 U.S.C. 652a (1950). Since the statute does not specify the categories of discharges to be issued, the Secretary has authorized a series of Army Regulations establishing five categories and describing the circumstances under which they shall be given. An Undesirable Discharge is issued to persons separated by administrative action from the Army because they are found to threaten the Army's discipline, or morale, or function as a national defense arm. Plaintiff was issued such a discharge as a security risk.

Understandably the establishment of standards and the administration of these standards have been considered as peculiarly military. It must be so for the military does

constitute a specialized community, of necessity governed by a discipline uniquely adapted to its own needs. 206. Respecting this the courts have been scrupulously careful not to interfere with, or intervene in, authorized and legitimate army matters. The statute authorizing military determination of discharge certificate has been construed to restrict judicial review.[1] Chief Judge Edgerton noted in *Gentila* v. *Pace*, 90 U.S. App. D.C. 75, 77, (D.C. Cir. 1951):

> "We think Congress intended that the Board's full and 'final' review should not be subjected to further review, or series of reviews, in the courts. We may suppose that Congress considered the heavy burden that would be imposed upon courts if they were required to review the findings upon which Army discharges are based. * * * At the very least, we think the statute intends that merely erroneous findings of fact by the Discharge Review Board shall not be revised by a court."

Although it may be true that the immediate case presents questions of law, it likewise involves a review of the findings upon which the separation was based, for while the vast majority of facts upon which the government relies occurred prior to induction, at least one such fact occurred during the term of military service. We feel constrained to hold, therefore, that under the present state of the law we lack requisite authority to review, control or compel the granting of particular types of discharge certificates.

We would, nevertheless, be remiss if we failed to point out the inequities which may result, as in this case, from the lack of adequate Congressional circumscription of military action regarding discharges—action which is isolated from judicial review.

The established policy of the military has been that the character of a discharge certificate is rooted in, and

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[1] See Marshall v. Wyman, 132 F. Supp. 169 (1955), Davis v. Woodring, 72 App. D.C. 83 (1940).

207 fashioned from, the conduct of a man during his term of service. In 1954, former Secretary of the Army Stevens stated:

> "The traditional policy of the Army has been that the discharge given should reflect the service rendered. In other words, a man whose conduct has been faithful and honest during the time in service would be entitled to separation under honorable conditions, notwithstanding what his conduct may have been prior to entering the service." (Hearings, Senate Armed Services Committees on S. 3096, 83d Cong., 2d Sess., March 18, 1954, at p. 75).[2]

Support for the proposition that a discharge certificate was intended to be an unlimited military appraisal of the lifelong conduct of an individual rather than a reflection of the quality of service rendered does not readily appear.

While the discharge certificate is issued by the military, it has tangible and practical consequences in civilian life. To an honorable discharge accrue property rights, civil rights, and community respect and honor. *United States* v. *Keating, et al.*, 121 F. Supp. 477 (D.C. Ill. 1949). Conversely, one receiving an adverse discharge certificate must expect to encounte substantial prejudice in civilian life. See, for example, form letter issued by the Army under SR 600-220-1 effective June 18, 1954. Congress has been informed that discharges are made on the basis of actual military service rendered and not on matters extraneous to such service.[3] If, in practice, this is not the case,
208 Congress should be so informed.

At the same time, if we have too narrowly construed the scope of judicial review under the present statute,

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[2] See also 13 Op. Atty. Gen. (1869), 18 Op. Atty. Gen. 427 (1886), and Army Regulation No. 615-360.

[3] Former Secretary of the Army Stevens testified before the Senate Armed Services Committee on March 18, 1954, that:

> "When evidence fails to show that he is disloyal, or otherwise subversive, but does establish that he is otherwise a security risk and should be eliminated, he is separated honorable conditions, usually with a general discharge."

it might be well to have a more definitive judicial determination as to the status of military service, the nature and import of a discharge certificate, and the scope of judicial review.[4] The Supreme Court has recently held that a soldier, once discharged, cannot be tried by the military for a crime alleged to have been committed while he was in the service.[5] We assume without question that the military cannot try a man for alleged criminal conduct committed prior to his entry into service. Does it not equally offend our traditional concept of justice that a man who serves the military with a rating of excellent can be dismissed by it, without being found disloyal, for non-criminal conduct which occurred primarily, if not exclusively, prior to induction, and can be furnished a discharge certificate which, by reflecting more than a record of military service, brings reproach and dishonor in civilian life?

As the law now stands, we lack jurisdiction to review or grant relief and are constrained to hold that summary judgment be granted to defendant.

Defendant will prepare an order consistent with this finding.

LUTHER W. YOUNGDAHL
Judge

January 24, 1956

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[4] The scope of the courts' power to review or control the action of the military in fixing the type of discharge certificate issued to soldiers has not as yet been clearly delineated by the Supreme Court. See *Patterson* v. *Lamb*, 329 U.S. 539, 542 (1947).

[5] United States ex rel Toth v. Quarles, 350 U.S. 11 (Dec. 7, 1955).

209 Filed February 6, 1956

Order

This cause having been heard on cross motions for summary judgment, and it appearing that plaintiff who was discharged from the Army with an undesirable discharge brings this action against the Secretary of the Army to obtain judicial review of the character of the discharge given him, and that this Court lacks authority to review, control, or compel the granting of particular types of discharge certificates;

Now, THEREFORE, it is hereby ordered, pursuant to the memorandum of the Court dated January 24, 1956, that plaintiff's motion for summary judgment be and it hereby is denied; that defendant's motion for summary judgment be and it hereby is granted; and that the complaint be and it hereby is dismissed.

/s/ LUTHER W. YOUNGDAHL
Luther Youngdahl
District Judge

Dated: 3 Febuary, 1956

SEEN:
JAMES H. HELLER
Counsel for Plaintiff

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210 **Notice of Appeal**

Notice is hereby given this 21st day of February, 1956, that Plaintiff, John Henry Harmon, III hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 6th day of February, 1956 in favor of defendant, William M. Brucker against said John Henry Harmon, III.

JAMES H. HELLER
Attorney for Plaintiff
1026 Woodward Building
Washington, D. C.

Civil Docket

(C.A. No. 1972-55)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Date	Proceedings
1955	Deposit for cost by
May 2	Complaint, appearance, Exhibits (2) filed
May 2	Summons, copies (1) and copies (1) of Complaint issued Served 5-3-55 U. S. Atty. Served 5-2-55 filed
June 16	Appearance of James H. Heller for pltf. Atty. Gen. Served 5-3-55 filed
July 19	Answer of deft. to complt; c/m 7-18-55; app. Joseph D. Guilfoyle, Edward H. Hickey & Donald B. MacGuineas. filed
July 19	Calendared (N)
Aug. 25	Motion of pltf. for summary judgment, affidavit of pltf; P & A; c/m 8-25-55; M.C. 8-25-55 filed
Sept. 7	Stipulation extending time for deft. to answer plf's motion for summary judgment to 9-16-55. filed
Sept. 8	Motion of pltf. to file supplemental complt. & substitute party deft; P & A; exhibit; ack ser. 9-8-55. filed.
Sept. 8	Order grating Pltf. leave to file supplemental complaint and substituting Wilber M. Brucker, individually and as Sec. of the Army in place and instead of Robert T. Stevens as party deft. (N) Holtzoff, J.
Sept. 8	Supplemental complaint substituting Wilber M. Brucker, individually and as Sec. of the Army in place and instead of Robert T. Stevens as party deft; affidavit; ack. of ser. 9-8-55; filed
Sept. 15	Stipulation extending time for deft. to answer motion for summary judgment to 9-30-55. filed
Oct. 7	Motion of deft. for extension of time to respond to pltff's. motion for summary judgment; c/m 10-7-55 filed

Oct. 11 Opposition of pltf to motion to extend time to answer motion for summary judgment, P&A, c/m 10-11-55

Oct. 13 Order extending deft's time to file opposition to motion for summary judgt. to 10-21-55. (N) Laws, C. J.

Oct. 21 Motion of deft for extension of time to respond to motion for summary judgment, affi., c/m 10-21-55 filed

Oct. 22 Pltf's opposition to deft's 2nd motion to extend time to answer pltf's Motion for summary judgment, P&A, c/m 10-21-55 filed

Oct. 25 Order granting defendant's motion for extension of time to file opposition to motion for summary judgment until Nov. 15, 1955. Tamm, J. (N)

Nov. 15 Motion of deft for summary judgment, affidavits (2) & exhibits (2) affidavit (1), M.C. 11-15-55. filed

Nov. 15 Brief of deft in support of motion for Summary Judgment & in opposition to Pltff's Motion for summary judgment appendix. filed

Nov. 22 Motion of Deft for leave to amend answer, c/m 11-22-55. filed

Nov. 23 Reply of pltf to defts brief & in opposition to motion for summary judgt, affi, exhibits A thru J, c/m 11-23-55 filed

Nov. 28 Opposition to motion for leave to amend answer. C/s 11-28-55 filed

Nov. 28 Motion of pltf for summary judgt. and motion of deft for summary judgt; argued and submitted. Rep. Delehanty Youngdahl, J.

Nov. 29 Amendment to answer of deft. c/m 11-28-55. (Fiat) Youngdahl, J.

1956

Jan. 24 Memorandum opinion. Youngdahl, J. (N)

Feb. 6 Order denying Pltff's motion for summary judgment & granting Deft's motion for summary judgment, & further that complt. be dismissed. (Signed 2-3-56) Youngdahl, J. (N)

Feb. 21 Motion of appeal of pltf from judgt. of 2-6-56; deposit $5.00 by James H. Heller, copies mailed to U. S. Atty. Atty. Gen. & Donald B. MacGuineas. filed

Feb. 21 Cost bond of pltf on appeal in sum of $250 with United States Fidelity & Guaranty Co. filed

Feb. 24 Plaintiff's designation of record on appeal, c/m 2-24-56 filed

Feb. 24 Plaintiff's statement of points on appeal, c/m 2-24-56 filed

Feb. 29 Motion respecting Record on Appeal, P & A, c/m 2-28-56. filed

Feb. 29 Plaintiffs Exhibits A. filed

Feb. 29 Defendants Exhibits # 1, 2 & 3. filed

Feb. 29 Order allowing Pltff. to withdraw his designation of contents of record on Appeal & statement of points on appeal, and further directing Clerk of Court to transmit to U. S. Court of Appeal for D. C. Circuit all original papers & exhibits & to prepare a certified copy of all docket entries in this action for transmission to U. S. Court of Appeal for D. C. Circuit. Youngdahl, J. (N)

Mar. 19 Record on Appeal delivered. Deposit by James H. Heller, $.50. filed

[fol. 109] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Excerpts from Appendix to Appellee's Memorandum Suggesting Mootness—Filed July 17, 1956

[fol. 110] AFFIDAVIT OF JOHN F. BURNS—June 19, 1956

Department of the Army
The Pentagon
Washington 25, D. C.

John F. Burns, Major, United States Army, being duly sworn deposes and says:

I am the Chief of the Discharge Unit, Enlisted Section, Separations Branch, Personnel Division, Office of the Adjutant General. In this official capacity I process, issue, review and coordinate the discharges of enlisted personnel of the Army. The records of my office show that on 11 April 1956, the Army Discharge Review Board had reviewed the matter of the discharge of John Henry Harmon, III, and recommended that the character of the discharge previously issued to John Henry Harmon, III, be changed from an Undesirable Discharge to a General Discharge under honorable conditions. Pursuant to the approval of the recommendation by the Secretary of the Army notification was forwarded to John Henry Harmon, III, on 7 June 1956 of the fact that the character of his discharge was changed from Undesirable to a General Discharge under honorable conditions. In this letter John Henry Harmon, III, was advised that before a new Report of Separation (DD Form 214) and Certificate of General Discharge (DD Form 257A) could be mailed to him, present administrative procedures required that he return to my office by mail the old report of Separation of Service and the Certificate of Undesirable Discharge which had been previously issued to him. A copy of the letter is attached to the affidavit as Inclosure 1. Upon receipt of the old Report of Separation (DD Form 214) and the Certificate of Undesirable Discharge (DD Form

258A), I will mail to John Henry Harmon, III, the new Report of Separation (DD Form 214) and Certificate of General Discharge under honorable conditions (DD Form 257A) which reflect the change of character of discharge [fol. 111] from the United States Army. Copies of these last two mentioned documents are attached as Inclosures 2 and 3 respectively.

John F. Burns, Major, AGC, United States Army.

Department of the Army
The Pentagon
Washington 25, D. C.

Subscribed and sworn before me this 19th day of June 1956.

Peter S. Wondolowski, Lieutenant Colonel, JAGC,
Authorized to administer oaths by 50 USC 732.

[fol. 112] INCLOSURE 1 TO AFFIDAVIT

6 June 1956

AGPO-XD 201 Harmon, John H., III
US51 207 184 (6 Jun 56)
Mr. John H. Harmon, III
601 East 226 St
Bronx, New York

Dear Mr. Harmon:

Reference is made to DD Form 214 furnished you upon separation from active military service on 2 June 1954.

A review of your records has been made and it has been determined by this office that the character of separation showing "Undesirable" is now recharacterized "General (Under Honorable Conditions)."

It is requested that you return your copy of DD Form 214 and the discharge certificate to this office, attention AGPO-XD. Upon receipt, you will be furnished a corrected copy of DD Form 214 and a corrected Discharge Certificate showing your character of separation as "General."

Sincerely yours,

John A. Klein, Major General, USA, The Adjutant General.

(Here follow 2 photo lithographs)

Note

Pages 111 and 112 are
on Card 2.

[fol. 115] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Excerpt from Appendix to Appellant's Statement in Opposition to Appellee's Memorandum Suggesting Mootness—Filed August 8, 1956

[fol. 116] AFFIDAVIT OF DAVID I. SHAPIRO—June 1, 1956

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

DAVID I. SHAPIRO, being duly sworn, deposes and says:

On June 1, 1956, at 3:30 P. M. of that day, your deponent spoke to Mr. Murphy, Assistant Secretary of the Committee on Character and Fitness for applicants for admission to the Bar of the State of New York, First Judicial Department, with respect to applicants who received a "General Discharge under Honorable Conditions" from military service.

Your deponent was informed that an applicant who received a "General Discharge under Honorable Conditions" from the Army of the United States, rather than an "Honorable Discharge," would be seriously prejudiced with respect to his admission to the Bar by reason of said "General Discharge"; that the determination of the Secretary of the Army that the applicant's military service was other than that which warranted an "Honorable Discharge" was a factor to be considered by the Committee on Character and Fitness for the First Judicial Department of the State of New York in determining whether the applicant had that "character, loyalty, and fitness" enabling him to be considered favorably for admission to the Bar of the State of New York; that a "General Discharge under Honorable Conditions" would undoubtedly hold up the applicant's admission to the Bar by reason of an investigation

and the subsequent determination thereon, which, even if favorable, would take considerable time, delaying the appli- [fol. 117] cant's admission to the Bar, whereas, if the applicant had received an "Honorable" discharge, that delay would not necessarily be encountered.

DAVID I. SHAPIRO.

Sworn to before me this
1st day of June, 1956.

HAROLD FRIEDMAN
Harold Friedman
Notary Public, State of New York
No. 41-6412025—Qual. in Queens Co.
Commission Expires March 30, 1958

[fol. 118] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Excerpt from Appendix to Brief for Appellee—Filed May 18, 1956

[fol. 119] EXCERPT FROM PLAINTIFF'S EXHIBIT A

Filed Feb. 29, 1956

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

Room 1E-512, The Pentagon
Washington 25, D. C.

Harmon, John H., III, US 51 207 184, Ref. File Nos. 1.12 & 13.21.

Appearing: Appl: Yes.

Counsel: David I. Shapiro, Esquire, 350 5th Ave., N.Y. 1, N.Y.

Review Set For: 27 July 1955.

CASE SUMMARY

* * * * * * * * *

10. (Service Record) Appl's character and efficiency ratings during service were as follows:

Character	Efficiency	From	To	Organization
Unk	Unk	31 Oct 52	13 Nov 52	Camp Kilmer, N. J.
Excellent	Excellent	14 Nov 42	28 Jul 53	IGMR, Pa.
Unk	Unk	29 Jul 53	1 Aug 53	Camp Pickett, Va.
Excellent	Excellent	2 Aug 53	24 Apr 54	Camp Pickett, Va.
Unk	Unk	25 Apr 54	13 May 54	Camp Pickett, Va.
Unk	Unk	14 May 54	2 Jun 54	Camp Pickett, Va. (disch)

* * * * * * * * * * *

"For Official Use Only"

[fol. 120] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,230

JOHN HENRY HARMON, III, Appellant,

v.

WILBER M. BRUCKER, Secretary of the Army, Appellee.

Before: Wilbur K. Miller, Bastian and Burger, Circuit Judges, in Chambers.

ORDER DENYING SUGGESTION OF MOOTNESS—August 17, 1956

Upon consideration of appellee's suggestion of mootness, wherein appellee suggests that this Court dismiss the appeal and remand the case with directions to the District Court to dismiss the case as moot, and of appellant's statement in opposition thereto, it is

ORDERED by the Court that the aforesaid suggestion of mootness be, and it is hereby, denied.

Per Curiam.

Dated: August 17 1956

Circuit Judge Burger did not participate in the foregoing order.

[fol. 121] IN UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13230

JOHN H. HARMON, III, Appellant,

v.

WILBER M. BRUCKER, Individually and as Secretary of the Department of the Army, Appellee.

Appeal from the United States District Court for the District of Columbia

OPINION—January 31, 1957

Mr. David I. Shapiro, of the bar of the Court of Appeals of New York, *pro hac vice,* by special leave of Court, with whom *Mr. James H. Heller* was on the brief, for appellant.

Mr. Donald B. MacGuineas, Attorney, Department of Justice, with whom Assistant Attorney General *George Cochran Doub, Mr. Oliver Gasch,* United States Attorney, and *Messrs. Samuel D. Slade* and *Howard E. Shapiro,* Attorneys, Department of Justice, were on the brief, for appellee.

Before PRETTYMAN, BAZELON and DANAHER, Circuit Judges.

PRETTYMAN, *Circuit Judge:* John Henry Harmon, III, was inducted into the Army on October 31, 1952, under [fol. 122] the Universal Military Training and Service Act of 1948.[1] In May, 1953, some questions concerning membership in and relations with the Communist Party, and similar matters, were addressed to him by Army officials. He replied under oath, answering some questions and refusing to answer others on the ground of possible self-incrimination; his answers were reduced to writing and signed by him. In February, 1954, he was notified by the Adjutant General of the Army that he should reply to

[1] 62 STAT. 604, 50 U.S.C.A. App. § 451 *et seq.*

certain derogatory information which had been received concerning him. This derogatory information was itemized in seven specifications, "a" to "g". Items "a" through "d" and Item "g" concerned reported activities on Harmon's part, Item "e" activity on his father's part, and Item "f" activities on his stepmother's part. Harmon replied to the items concerning himself, but as to Items "e" and "f" he said: "It is with deepest moral indignity coupled with a devout sense of filial piety, that I refuse to answer the derogatory statements made under allegations e and f. As neither my father nor stepmother are employed in any capacity by the federal government, I am led to the conclusion that derogatory information concerning them is wholly irrelevant to the case at hand." Thereafter Harmon was informed that his discharge as disloyal or subversive under Army Regulation 615-370 had not been favorably considered and that he would be retained in the service in his then-present grade. Shortly thereafter the Secretary of Defense issued Directive 5210.9, the purpose of which was to apply to military personnel the security programs established by Executive Order 10450 in respect to civilian Government employees. It directed that the standard for retention within the armed services should be "that on all the available information it is determined that the * * * retention is clearly consistent with the interests of national security." [fol. 123] The directive was accompanied by a memorandum from the Secretary, directing that a review be made of all cases which had theretofore been cleared. Thereupon Harmon's case was reviewed, and the Army Personnel Board found that his further retention in the service was inconsistent with the interests of national security and recommended that he be discharged with an undesirable discharge. On June 2, 1954, he was discharged as undesirable. Harmon appealed to the Army Discharge Review Board to have the character of his discharge changed from undesirable to honorable. He was given a hearing, at which he appeared, and thereafter his application for a change was denied. He applied to the Army Board for the Correction of Military Records for the change in his discharge, and that application was denied. He then made a direct request to the Secretary for award of an

honorable discharge, and this request was reviewed by an Assistant Secretary, who referred it to the Board for the Correction of Military Records. Harmon declined a hearing before that Board, stating that he had no additional facts to present. He took the position that the discharge certificate must accurately and adequately reflect the character of his military service and that, inasmuch as the character of this service, as set forth in his service record, was "excellent", he should receive an honorable discharge. The Board recommended against a change in the discharge, and the Assistant Secretary approved that recommendation.

Harmon filed a complaint in the District Court, praying that the action of the Secretary in discharging him with an undesirable discharge be declared null, void and illegal as in violation of the Constitution, the statutes, and Army regulations; and that his discharge be ordered changed from undesirable to honorable. On February 3, 1956, the District Court granted the Secretary's motion for summary judgment, on the ground that the court lacked authority to review, control or compel the granting of par-
[fol. 124] ticular types of discharge certificates to persons discharged from the Army.[2] Harmon appealed. Thereafter the Army Discharge Review Board, in the course of a general review of military personnel security cases, reviewed Harmon's case, and the character of his discharge was changed from undesirable to general under honorable conditions. He was thereupon issued a discharge certificate reading:

GENERAL DISCHARGE

Under Honorable Conditions

from the Armed Forces of the United States of America

This is to certify that

John Henry Harmon III US51 207 184 Private AUS

was Discharged from the

ARMY OF THE UNITED STATES

on the 2d day of June 1954 under honorable conditions

[Signed] R L Richstatter

R L RICHSTATTER

Captain Adjutant General's Corps

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[2] Harmon v. Brucker, 137 F.Supp. 475 (1956).

The Secretary suggested to this court that the case thus became moot. Harmon opposed the suggestion, upon the ground that the controversy was whether he should receive an honorable discharge. This court, on August 17, 1956, by order denied the Secretary's suggestion of mootness.

The alleged derogatory information concerning Harmon which was incorporated in Items "a", "b" and "c" of the initial notice of the Adjutant General concerned activities in 1951 and 1952 in a camp reported to be Communist-operated, employment in 1949 in an organization reported to be subversive, and registration in 1952 with the American Labor Party, cited by the House Committee as being [fol. 125] under Communist control. All these alleged activities were prior to Harmon's induction into the Army. Item "d" was that Harmon "Solicited contributions of money for the defense of persons under indictment for violation of the Smith Act." Within a month after his induction into the Army Harmon wrote a letter to two friends, suggesting that they make a financial contribution to assist in the defense of two individuals who had been indicted under the Smith Act. Item "g" was that Harmon had been "Associated with persons who were Communists or Communist sympathizers." In response to this item Harmon said he was not then nor had he ever been a member of the Communist Party but that in the course of appearances before many groups and audiences it was quite possible that he had known or been acquainted with Communists or their sympathizers.

In respect to Harmon's military service the Secretary says that his (Harmon's) service record was marked "excellent" for the periods November 12, 1952, to July 24, 1953, and from August 2, 1953, to April 24, 1954, and that for the balance of his service his record was marked "unknown" as to character and efficiency.

As the case is now before us, the questions are (1) whether the court can declare null and void the action of the Secretary in discharging Harmon with a "General Discharge Under Honorable Conditions" and (2) whether the court can order the Secretary to change Harmon's discharge from "General Discharge Under Honorable Con-

ditions" to "Honorable Discharge". We agree with the District Judge that the court cannot take either of such actions.

The nub of Harmon's contention on the first question is that he is entitled to judicial review of the Army's action. He does not contend that he could not be discharged; his complaint goes to the type of discharge given him. He was accorded all the procedural steps established by the Army regulations for the consideration and determina- [fol. 126] tion of the propriety of discharges from the military service. As we have pointed out, he specifically told the Army authorities that he had no further facts to present. No statute was misapplied in the process or the substance of the discharge. No statute directs or authorizes judicial review of Army discharges. Indeed the statute provides that decisions of the Army boards shall be final.[3] Thus Harmon's argument must rest upon constitutional grounds: that as a matter of due process of law or by some other constitutional requirement he was entitled to court review of the type of discharge which he should be given.

The Constitution provides that the President shall be Commander in Chief of the Army and Navy of the United States[4] and that Congress shall have power to make rules for the government and regulation of the land and naval forces.[5] Title 10 of the United States Code clearly expresses a Congressional intent that the Army be administered solely by the executive branch of the Government.[6] The statute in effect at the time of Harmon's discharge provided[7] that "No enlisted person, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge,

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[3] Act of June 22, 1944, 58 STAT. 286, as amended, 38 U.S.C.A. § 693h.

[4] Art. II, § 2, cl. 1.

[5] Art. I, § 8, cl. 14.

[6] 10 U.S.C. § 3012 (1956) [formerly 5 U.S.C.A. § 181—4, 64 STAT. 264 (1950).

[7] 41 STAT. 809 (1920), as amended, 10 U.S.C.A. § 652a (Supp. 1956) [now 10 U.S.C. § 3811 (1956)].

and no enlisted person shall be discharged from said service before his term of service has expired, *except in the matter prescribed by the Secretary of the Department of the Army,* or by sentence of a general or special court-[fol. 127] martial." (Emphasis ours.) Throughout our history the Articles of War and similar statutes have entrusted to the Secretary of War and his agents the granting of certificates of discharge.[8] The statute which authorized the Secretary to establish a board to review the types and natures of discharges specifically provided that the findings of such a board should be "final subject only to review by the Secretary of the Army".[9] The courts have held many times that they have no power to review the administrative processes by which the President and the Secretaries administer the affairs of the Army, and this doctrine has extended to the nature of discharges from the service.[10] On this subject we said in *Gentila* v. *Pace*:[11]

[fol. 128] "We think Congress intended that the Board's [the Army Discharge Review Board's] full

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[8] WINTHROP, MILITARY LAW AND PRECEDENTS 547, 931, 933, 961, 972 (2d ed. 1920); Act of April 2, 1806, 2 STAT. 359, 361; REV. STAT. § 1342, Art. 4 (2d ed. 1878); Sec. 4(b), Selective Service Act of 1948, 62 STAT. 606, as amended, 50 U.S.C.A. App. § 454(b).

[9] *Supra* note 3.

[10] United States v. Eliason, 41 U.S. (16 Pet.) 291, 301-302, 10 L.Ed. 968 (1842); Reaves v. Ainsworth, 219 U.S. 296, 304, 306, 55 L.Ed. 225, 31 S.Ct. 230 (1911), *affirming* 28 App. D.C. 157 (D.C. Cir. 1906); Creary v. Weeks, 259 U.S. 336, 66 L.Ed. 973, 42 S.Ct. 509 (1922); French v. Weeks, 259 U.S. 336, 66 L.Ed. 965, 42 S.Ct. 505 (1922); Reid v. United States, 161 Fed. 469 (S.D.N.Y. 1908), *writ of error dismissed,* 211 U.S. 529, 53 L.Ed. 313, 29 S.Ct. 171 (1909); Davis v. Woodring, 72 App. D.C. 83, 111 F.2d 523 (D.C. Cir. 1940); Schustack v. Herren, 234 F.2d 134 (2d Cir. 1956); Nelson v. Peckham, 210 F.2d 574 (4th Cir. 1954); Bernstein v. Herren, 136 F.Supp. 493 (S.D.N.Y. 1955), 141 F.Supp. 78 (S.D. N.Y. 1956), *aff'd,* 234 F.2d 434 (2d Cir. 1956); Weeks v. United States, 51 App. D.C. 195, 277 Fed. 594 (D.C.Cir. 1922), *aff'd sub nom.* Creary v. Weeks, 259 U.S. 336, 66 L.Ed. 973, 42 S.Ct. 509 (1922); Marshall v. Wyman, 132 F.Supp. 169 (N.D.Cal. 1955); Nordmann v. Woodring, 28 F.Supp. 573 (W.D.Okla. 1939); McKenzie v. Kirkpatrick, 141 F.Supp. 49 (N.D.Cal. 1956).

[11] 90 U.S. App. D.C. 75, 77, 193 F.2d 924, 927 (1951), *cert. denied,* 342 U.S. 943, 96 L.Ed. 702, 72 S.Ct. 556 (1952).

> and 'final' review should not be subjected to a further review, or series of reviews, in the courts. We may suppose that Congress considered the heavy burden that would be imposed upon courts if they were required to review the findings upon which Army discharges are based. As the Supreme Court has said in regard to a type of dispute for which the Railway Labor Act provides, the 'intent seems plain—the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law.' Switchmen's Union of North America v. National Mediation Board, 320 U.S. 297, 305, 64 S. Ct. 95, 99, 88 L. Ed. 61."

It is said that the foregoing statement was *dictum*. Whether that be so or not, we think the statement is correct. We adhere to it and adopt it for application here.

The import of the opinion of the Supreme Court in *Orloff* v. *Willoughby*[12] is the same as that of the opinions we have cited. There a physician inducted into the Army under the Doctors Draft Act[13] refused to state whether he was a member of the Communist Party. Because of this refusal he was not commissioned or given the duties of an Army doctor. He applied to a federal court for *habeas corpus* and for a discharge. He urged that it had been a uniform practice to commission Army doctors and, furthermore, that his induction under the Doctors Draft Act contemplated and required that he be given a commission. The Supreme Court held that the courts have no power to review such a matter, which fell within the [fol. 129] executive duties of the President and the Army. The Court observed:

> "We know that from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism or other objectionable handling of men. But judges are not

[12] 345 U.S. 83, 97 L.Ed. 842, 73 S.Ct. 534 (1953).

[13] 64 STAT. 826 (1950), 50 U.S.C.A. App. § 454(i).

given the task of running the Army. The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates. The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters. While the courts have found occasion to determine whether one has been lawfully inducted and is therefore within the jurisdiction of the Army and subject to its orders, we have found no case where this Court has assumed to revise duty orders as to one lawfully in the service." [11]

Reason and the practicalities dictate the rule which we have found in the cases. Reason, flowing from the doctrine of the separation of powers, dictates that in many fields the administrative discretion of the executive branch and the legislative discretion of the legislative branch be not subject to interference or review by the courts. In no field is this doctrine more pertinent and important than in the operation of the armed forces. Provisions for the establishment and operation of such forces necessary to the security of this country are wholly legislative matters, and the administration of those forces is the very essence of executive action. The Constitution so provides. Only in the most extreme cases can the judiciary interfere in this area. As a practicality the operation of military forces requires expeditious, sometimes instant, action [fol. 130] and thus requires discipline. From the standpoint of the Army it is easy to see the disastrous effect upon discipline if the type of discharge which could be given an enlisted man were not within the power of his commanding officer or the Secretary, but were subject to litigation and to review and decision by a court wholly removed from the necessities of military affairs. As a fur-

[11] 345 U.S. at 93-94.

ther matter of practicality, from the standpoint of the courts review of such matters would impose an appalling burden, with which the courts are wholly unequipped to cope.

Harmon's insistence is that the type of discharge given him must be determined by the character of his military service and without regard to pre-induction events, activities, etc. But that is not our question. Our question is not what type of discharge he ought to be given; it is whether a court can review and determine the type of discharge. Harmon says a court can and must do so. To reach that conclusion a number of propositions are suggested.

The first such proposition concerns procedural due process. Harmon was given an opportunity to reply to the alleged derogatory information and was then issued a discharge. Thereafter he was given a hearing before the Army Discharge Review Board. He appealed that Board's adverse decision to the Army Board for the Correction of Military Records, again without success. Later, in connection with a direct appeal to the Secretary, he was offered a second hearing, which he declined. Harmon was thus given the full measure of procedural rights afforded by the Congress for persons in the military service. The Supreme Court held in *Reaves* v. *Ainsworth*,[15] "Besides, what is due process of law must be determined by circum- [fol. 131] stances. To those in the military or naval service of the United States the military law is due process. The decision, therefore, of a military tribunal acting within the scope of its lawful powers cannot be reviewed or set aside by the courts."

Harmon urges that the Army violated Directive 5210.9 by failing to give him a hearing. He was notified on May 26, 1954, of his proposed discharge. The Directive provides "an opportunity upon request to present any cause why he should not be so separated." Harmon made no such request. Later, as we have pointed out, he was afforded a hearing before the Review Board. The requirements of procedural due process were fully met.

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[15] 219 U.S. 296, 304, 55 L.Ed. 225, 31 S.Ct. 230 (1911). And see Burns v. Wilson, 346 U.S. 137, 97 L.Ed. 1508, 73 S.Ct. 1045 (1953).

We find no question of substantive due process. The consideration of pre-induction activity was not frivolous, arbitrary or discriminatory; it was based upon reasonable grounds. Activity in the Communist movement involves participation in a conspiracy dangerous to our national security. Surely the Army cannot be compelled to retain a security risk in its service. Surely the President may apply to military personnel the same program and policies as to security and loyalty which he applies to civilian personnel in sensitive positions in the Government civilian service.[16] Harmon does not contend that he could not be separated from the service because of pre-induction conduct. If that be so, if he can be discharged as a security risk, the Army can determine whether he is or is not a security risk. And in that determination surely no data is more relevant and material than are his past habits, activities and associations. Such data is universally the material from which a determination of character or suitability is made, if indeed it is not the only material [fol. 132] from which it can be made. The Army, in making that determination, was not trying to find him guilty or not guilty of some act or offense. It was trying to determine his character as a security risk *vel non* and his consequent suitability for Army service. If it could make that determination, as admittedly it could, and upon that basis could determine whether a man was suitable for any service whatsoever, it could include that consideration among the factors to be considered in determining the value of his service and, consequently, in selecting the type of discharge to be given him. Moreover it is reasonable for Army authorities to believe that a security risk is not usable for many types of military service required of other soldiers, and that factor may well affect the value of the military service of such a person and, consequently, the type of discharge given him.

An honorable discharge from the Army, is, as Harmon claims it is, a mark of distinction. The courts cannot

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[16] See Cole v. Young, 351 U.S. 536, 100 L.Ed. 1396, 76 S.Ct. 861 (1956); *cf.* Jason v. Summerfield, 94 U.S. App. D.C. 197, 214 F.2d 273 (D.C.Cir. 1954), *cert. denied*, 348 U.S. 840, 99 L.Ed. 662, 75 S.Ct. 48 (1954).

dictate to the Army that it must give this mark to an enlisted man when it finds, on the basis of pre-induction activities, that his presence in the armed forces is not consistent with the national security.

It is suggested that a general discharge under honorable conditions imposes a "stigma" and so is punishment. Punishment, it is said, cannot be inflicted without judicial scrutiny. The Army can impose punishment, even the punishment of death, without judicial review.[17] Moreover the type of a discharge is not punishment in the sense that judicial process is required. No finding of guilt, no loss of liberty are involved. The penalty is the same as that which results from many unhappy experiences. Consideration of such "penalties" must begin in perspective. A discharge from civilian, commercial employment carries penalties in a real sense—stigma, loss of pay, difficulty [fol. 133] in subsequent employment; but no one would suggest that an employer cannot discharge an employee without judicial scrutiny. A civilian employee of the Government can be dismissed upon charges of a criminal offense without judicial review.[18] The courts do not interfere in such matters. When the same "penalties" arise from action of military authorities, they do not thereby become "punishment" necessitating judicial action.

Stigma attaches on rejection from military service as a security risk. Indeed, if one be rejected entirely, on account of being a security risk, the adverse effects are greater than upon receiving a General Discharge Under Honorable Conditions. Many benefits attach to status under the latter which do not attach to rejection. And the intangibles of stigma attach in either event. Nevertheless it certainly cannot be urged that the Army may not reject, without judicial review, as a security risk one registered for service.

It is suggested that an honorable discharge is of so great value that a man can be denied one only if he be

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[17] Burns v. Wilson, 346 U.S. 137, 97 L.Ed. 1508, 73 S.Ct. 1045 (1953).

[18] See, *e.g.*, Eberlein v. United States, 257 U.S. 82, 42 S.Ct. 12, 66 L.Ed. 140 (1921).

afforded a right to judicial review. To hold to that effect would be to vitiate the whole discharge process provided by the Secretary.[19] The courts have no authority to take such action. They cannot arrogate to themselves supervisory authority over the Army. Apt on this point is another quotation from *Reaves* v. *Ainsworth, supra*. The Supreme Court said:

> [fol. 134] "The courts have no power to review. The courts are not the only instrumentalities of government. They cannot command or regulate the army. To be promoted or to be retired may be the right of an officer, the value to him of his commission, but greater even than that is the welfare of the country, and, it may be, even its safety, through the efficiency of the army. • • • If it had been the intention of Congress to give to an officer the right to raise issues and controversies with the board upon the elements, physical and mental, of his qualifications for promotion and carry them over the head of the President to the courts, and there litigated, it may be, through a course of years, upon the assertion of error or injustice in the board's rulings or decisions, such intention would have been explicitly declared. The embarrassment of such a right to the service, indeed the detriment of it, may be imagined." [20]

There is a margin of value of an "Honorable Discharge" over a "General Discharge Under Honorable Conditions". But a considerable measure of value is involved in a Government job, such as was involved in *Williams* v. *Cravens*,[21] and in the rights of a contractor, such as were involved

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[19] On March 18, 1954, Robert T. Stevens, then Secretary of Defense, told the Senate Armed Services Committee: "When the evidence fails to show that he is disloyal, or is subversive, but does establish that he is otherwise a security risk and should be eliminated, he is separated under honorable conditions, usually with a general discharge." *Hearings on S. 3096*, 83d Cong., 2d Sess. 75.

[20] 219 U.S. at 306.

[21] 93 U.S. App. D.C. 380, 210 F.2d 874 (D.C.Cir. 1954), *cert. denied*, 348 U.S. 819, 99 L.Ed. 646, 75 S.Ct. 30 (1954).

in *Larson* v. *Domestic & Foreign Corp.*,[22] and in a public utility business, such as was involved in *Kansas City Power & Light Company* v. *McKay*.[23] Yet in all these instances the holders of the rights were deprived of them without court review.

It is suggested that the consideration of pre-induction happenings is in conflict with the traditional policies of the Army. Most certainly we cannot order the Army to [fol. 135] adhere to traditional practices. The armed forces in 1953-54 faced many new problems not involved in the operation of the military services of the 1770's, or the 1860's, or in 1917-18, or even in the early 1940's. Activity in the Communist movement now involves a possible conspiratorial participation dangerous to the security of this country. The efforts of this movement to infiltrate all parts of the Government pose new problems, which must be met with new rules and regulations.

Harmon argues that the pre-induction events considered by the Army were political opinions and so could not validly be considered under the First Amendment. Activity in the world Communist movement has long since passed the boundaries of mere political opinion. It may well make a man a security risk, and, as we have pointed out, the courts cannot compel the Army to retain in its service a security risk.

We come now to the second of Harmon's prayers, that the court direct the issuance to him of an honorable discharge. It is settled beyond question that the courts will not direct by *mandamus* any executive action which lies within the realm of executive discretion.[24] This is a rule of law quite apart from the peculiar insulation of Army affairs from judicial scrutiny. Harmon's prayer that the court direct the issuance to him of an honorable discharge

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[22] 337 U.S. 682, 93 L.Ed. 1628, 69 S.Ct. 1457 (1949).

[23] 96 U.S. App. D.C. 273, 225 F.2d 924 (D.C.Cir. 1955), *cert. denied*, 350 U.S. 884, 100 L.Ed. 780, 76 S.Ct. 137 (1955).

[24] Anderson v. McKay, 94 U.S. App. D.C. 11, 211 F.2d 798 (D.C.Cir. 1954), *cert. denied*, 348 U.S. 836, 99 L.Ed. 660, 75 S.Ct. 51 (1954). See discussion and cases cited in Clackamas County, Ore. v. McKay, 94 U.S.App. D.C. 108, 219 F.2d 479 (D.C.Cir. 1954).

is certainly a prayer for *mandamus,* and certainly the Congress has lodged within the area of executive discretion the selection of types of discharges to be given military personnel. So this prayer in Harmon's complaint does not lie within the jurisdiction of the court under the general rule applicable to all types of executive action. Even if such a prayer for mandatory direction ran [fol. 136] only to a civilian matter which had none of the elements of a military affair, the courts would have no authority in respect to it.

Affirmed.

BAZELON, *Circuit Judge,* dissenting: Appellant is a youth who was plucked out of civilian life and made a soldier, as are many others, at the threshold of the career he was planning for himself. Before the end of his term of service, he was restored to his civilian status, but hung about his neck was the millstone of "security risk." The Army has information about his civilian activities and associations on the basis of which it believes it would not be in the national interest to retain him as a soldier, but his military service is admitted to have been "excellent" and he is not claimed to have done anything illegal or reprehensible during his tour of duty. He does not challenge the discretion of the Secretary of the Army to judge whether the national security is served by dismissing a soldier. He complains only that, in the exercise of that discretion, there is neither necessity nor authority for inflicting upon him a gratuitous wound which may plague him all the rest of his days.

Appellant was inducted into the Army on October 31, 1952, as a draftee. On February 9, 1954, the Adjutant General of the Army informed him that the Army had received "derogatory" information about him and ordered him to reply thereto. He replied in writing on March 11, 1954. On April 2, 1954, the Adjutant General of the Army, acting by order of appellee, informed appellant that, upon review of the derogatory information and appellant's replies thereto, it had been determined that appellant would not be discharged under AR 615-370 as

disloyal or subversive, but would be retained in his grade until completion of his service period, at which time he would receive a discharge "appropriate to the character [fol. 137] of service" he had rendered.[1] Five days later, the Secretary of Defense promulgated his Directive 5210.9, purporting to apply to military personnel the criteria of the civilian security program, Executive Order 10450 (April 27, 1953, 18 FED. REG. 2489), and to authorize dismissal of a soldier as a security risk if "on all the available information it is determined that [his] retention is [not] clearly consistent with the interests of national security." On May 26, 1954, the determination to let appellant complete his service was reversed and he was informed that he would be given an "undesirable" discharge under AR 615-370 prior to the expiration of his service period. On June 2, 1954, he received such a discharge.[2]

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[1] This comported with the traditional Army policy that the type of discharge be governed entirely by the service record, absent some disqualification covered by specific regulation. Thus, though a less than honorable discharge certificate can be given to a homosexual, a drug addict, a chronic alcoholic, a habitual shirker, a person with psychopathic personality, or a repeated petty offender (AR 635-208, formerly AR 615-368); to a deserter, a soldier who has entered the Army by fraud, or one who is convicted of crime in a civil court (AR 635-206, formerly AR 615-366); or to one who is "determined by investigation to be disloyal or subversive" (AR 615-370, as implemented by Special Regs 600-220-1); where there is no such fault, an honorable discharge is called for if the soldier's conduct has been rated at not less than "good" and his efficiency at not less than "fair" (AR 635-200, par. 8). Former Secretary of the Army Stevens told a Senate Committee:

> The traditional policy of the Army has been that the discharge given should reflect the service rendered. In other words, a man whose conduct has been faithful and honest during the time in the service would be entitled to separation under honorable conditions, notwithstanding what his conduct may have been prior to entering the service. *Hearings, Senate Armed Services Committee on S. 3096*, 83d Cong., 2d Sess., March 18, 1954, at p. 75.

[2] Defense Directive 5210.9 provides that the separation report of a soldier discharged as a security risk "will cite as authority the appropriate Armed Service directive under which separation is effected." Par. VIII-F-6. On June 2, 1954, when appellant was given his undesirable discharge, there was no specific Army direc-

[fol. 138] Appellant sought unsuccessfully to have his discharge changed to "honorable," first by appeal to the Army Discharge Review Board and then, in turn, to the Army Board of Correction of Military Records and the Secretary of the Army. Having exhausted all possible administrative remedies, he commenced this suit seeking a declaration that his undesirable discharge was void and an order that it be changed to an honorable discharge. Cross-motions for summary judgment were made. The District Court, concluding that it lacked jurisdiction of the cause, denied appellant's motion and entered summary judgment against him. This appeal followed.

The derogatory information the Army had about appellant was that he had been employed at what was "reported to be a Communist operated camp"; that he had been employed by the Detroit Urban League, "reported [fol. 139] to be a subversive organization"; that he had once "registered to vote in New York City with the American Labor Party . . . cited by the House Committee on Un-American Activities as being under Communist control . . ."; that he had solicited contributions for the defense of Smith Act prosecution defendants; that his father was reported to be a Communist, and connected with various organizations cited as subversive by the Attorney General and to have registered many times with the American Labor

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tive dealing with security risks. AR 615-370, which was cited in the separation report as authority for the discharge, permits an undesirable discharge only upon a determination that the soldier is "disloyal or subversive." No such determination having been made regarding appellant, AR 615-370 was inapplicable. Indeed, appellee asserts that it was cited by mistake, the real basis for appellant's discharge being Directive 5210.9 itself.

By the time the Army Discharge Review Board reviewed appellant's discharge on April 11, 1956, and upgraded it to "General," the Army had already promulgated its specific "Personnel Security Clearance" regulations, AR 604-10, July 29, 1955. But those new regulations were not cited in the corrected separation report as authority for the action. The only additional authority cited for the new action was "Sec. 301, P.L. 346" which is merely the provision for review procedure, 58 STAT. 286 (1944), 38 U.S.C. § 693 (h). Thus the only basis for appellant's discharge remains Defense Directive 5210.9.

Party; that his step-mother had registered with the American Labor Party for about ten years; and that he associated with Communists or Communist sympathizers.[3] In his written reply of March 11, 1954, appellant admitted summer employment by the camp as a kitchen-helper and assistant breakfast cook and by the Urban League as a counselor in its camp for under-privileged negro children. Concerning registration with the American Labor Party, [fol. 140] he had admitted it when first interrogated in May 1953,[4] and now added only that, since it was a legally recognized political party, he felt he could properly vote for it. Similarly, he had earlier admitted soliciting funds for the defense of two Smith Act indictees, and now merely added that he felt he had a right to do so. He denied that he was or had ever been a member of the Communist Party, but said that it was possible that he had known or been acquainted with Communists or sympathizers. The allegations concerning his parents he refused to reply to, as he had at his earlier interrogation. The District Court noted in its opinion that "Save for plaintiff's continuing association with his parents and for writing one

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[3] On May 7, 1953, the Army, without revealing this derogatory information to appellant, used it as the basis for interrogating him. On that occasion appellant denied that he was or had ever been a Communist or a member of any subversive organization, gave some details concerning persons about whom he was asked, described the circumstances under which he solicited funds for the defense of the Smith Act defendants, and gave sundry other information. With respect to a number of questions, appellant invoked his privilege under the Fifth Amendment and under Article 31 of the Uniform Code of Military Justice, 64 STAT. 118, 50 U.S.C. § 602, against self-incrimination. He later explained that he had invoked his privilege as a result of fear and apprehension growing out of the circumstances of the interrogation and the fact that he was without counsel. The questions as to which he had invoked the privilege were put to him again in the February 9, 1954, order and he answered all of them, except those relating to his parents. As to those, his refusal was based not on privilege, but rather on "moral indignity [*sic*]," "filial piety," and the assertion that they were irrelevant.

[4] *Supra* note 3.

letter requesting contribution for the legal defense of two persons indicted under the Smith Act, all charges against plaintiff were based on conduct antedating his induction into the Army." [5]

In his complaint, appellant alleged that his character and efficiency ratings had been "excellent." In his first answer, filed July 19, 1955, appellee admitted this allegation. On November 29, 1955, however, by amended answer, he pointed out that for about a week in July 1953 and for the period after April 24, 1954 (shortly before his discharge was ordered) appellant's rating was recorded as "unknown." But, under Army regulations, "ratings of 'unknown' and ratings for periods of less than two months are not 'disqualifying.'" [6]

Appellant also alleged that he was not and had never been a member of the Communist Party, or any Communist organization, or any organization advocating overthrow of the government or advocating or approving violence in denying others constitutional rights, or any [fol. 141] organization seeking to alter our form of government by unconstitutional means, or any organization which, so far as he knew, had ever engaged in subversive activities. He also alleged that he was and always had been "completely and unswervingly loyal to the Government of the United States" and that he "would not hesitate to lay down his life in defense of the United States against any and all of its enemies whomsoever." Appellee denied these allegations, not on the ground that he believed them to be untrue but because of "lack of knowledge and information sufficient to form a belief" concerning them.

Appellee's first contention is that we should not even reach the question whether the District Court correctly declined jurisdiction. He informs us that, after this appeal was filed, the Adjutant General notified appellant that the character of his discharge had been upgraded from "undesirable" to "General (under honorable conditions)" and he asserts that there is, therefore, no longer

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[5] *Harmon* v. *Brucker*, 137 F.Supp. 475, 476 (D.D.C. 1956).

[6] AR 615-360, par. 8b.

a judicially cognizable case or controversy.[7] This new form of discharge, however, is not the legal equivalent of the honorable discharge which appellant sought.

It may well be, as appellee states, that none of the benefits available to discharged soldiers under federal law are withdrawn from the holder of such a "general" discharge as this. Many benefits are conferred, however, by the statutes of the State of New York, where appellant resides, and those statutes all use the language "honorable discharge" or "honorably discharged." Although the New York courts have not decided whether this excludes holders of a discharge entitled "General (under honorable conditions)," the late Judge Frank of the Court of Appeals for [fol. 142] the Second Circuit suggested that it would.[8] But whatever may be said of the technical legal equivalence or difference between the two types of discharge, from a real-life point of view they are vastly different. The portion of our population holding honorable discharge certificates from the armed services is now so great that an adverse reflection is inherent in a certificate which is other than "honorable."[9] This is, of course, confirmed by

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[7] The majority expresses no specific opinion as to this contention. It would seem, however, since the majority proceeds to deal with the question of the District Court's jurisdiction, that it rejected the contention that there is no longer a judicially cognizable case or controversy.

[8] "Although a General Discharge (Under Honorable Conditions) apparently entitles a veteran to most, if not all, benefits under federal law, the statutes of New York, of which plaintiff is a resident, requires [*sic*] that a veteran have an Honorable Discharge in order to be eligible for various benefits under state law. See e.g. New York Military Law Sections 245, 250; New York General Municipal Law Section 148; New York Education Law Section 609; New York General Business Law Section 32." *Schustack* v. *Herren*, 234 F.2d 134, 135 n.2 (2d Cir. 1956).

[9] What the Supreme Court said in *Wieman* v. *Updegraff*, 344 U.S. 183, 190-91 (1952), concerning the discharge of an employee on disloyalty grounds is, we think, not inapplicable here:

> There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty

the statement of appellee's counsel in oral argument that "every soldier gets an honorable discharge unless there is some blemish on his record on account of which he receives a discharge other than honorable."

Nor is the new form of discharge defensible on the ground that the separation report does not on its face indicate that it was based on security considerations. The same observation could be made concerning the "undesirable" discharge. In both instances, however, a person [fol. 143] sufficiently interested to check army regulations would discover the "security" character of the discharge. In the case of the "undesirable" discharge, the only reference to security was the citation of the "disloyal or subversive" regulation, AR 615-370, as the "Reason and Authority for Separation." The separation report accompanying the "General" discharge recited that "Para. 10, AR 615-120 applies." This regulation was cited, according to appellee, "to inform recruiting officers that appellant is ineligible for enlistment in the Regular Army." [10] As anyone may discover, this is a reference to AR 604-10, paragraph 15d, which provides:

> No applicant will be appointed or enlisted without the specific approval of the Secretary of the Army if his separation from previous service indicates that he was relieved from active duty or discharged either as a security risk or for reasons other than security while undergoing investigation under the provisions of these regulations or of corresponding security

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grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when "each man begins to eye his neighbor as a possible enemy."

[10] Compare, in this connection, *Bailey* v. *Richardson*, 86 U.S. App.D.C. 248, 257-58, 182 F.2d 46, 55-56 (1950), *affirmed by an equally divided Court*, 341 U.S. 918 (1951), in which in sustaining the validity of the Government's civilian employee loyalty program, we pointed out that "mere dismissal from the Government service" is not punishment in the sense that permanent proscription from Government service had been held to be in *United States* v. *Lovett*, 328 U.S. 303, 316 (1946).

regulations issued by the other miltary departments. AR 615-120 applies with respect to former members of the armed services seeking enlistment or reenlistment in the Army.

See also Defense Department Directive 5210.9, par. II.

Our jurisdiction to entertain the appeal being unimpaired, the next question to consider is the District Court's ruling that, under our decision in *Gentila* v. *Pace*, 90 U.S.App.D.C. 75, 193 F.2d 924 (1951), it was "constrained" to disclaim jurisdiction of the cause.

"Stripped of self-contradiction and legal conclusions [fol. 144] all that [Gentila's] complaint allege[d]" was that his dishonorable discharge for desertion rested upon "an erroneous finding of fact" that he was mentally capable of forming an intent to desert. We held that "merely erroneous findings of fact by the Discharge Review Board shall not be revised by a court." 90 U.S.App.D.C. at 77, 193 F.2d at 927. Although the District Court recognized that the instant case involved questions of law, it nevertheless thought *Gentila* controlling on the ground that both cases also involve "a review of the findings upon which the separation was based . . . ." *Harmon* v. *Brucker*, 137 F.Supp. 475, 477 (D.D.C. 1956). In this the District Court was wrong. The "findings upon which the separation [in the present case] was based" are not challenged at all. Indeed, as the majority opinion points out, appellant does not challenge the appellee's power to remove him from the Army on mere suspicion that he is a security risk.[11] But, whether or not the interests of national security justify dismissing a soldier on mere suspicion, appellant claims that those interests are not served by branding such a soldier as a security risk as

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[11] Cf. *Bailey* v. *Richardson*, *supra* note 10, 86 U.S.App.D.C. at 263, 182 F.2d at 61: "The Constitution does not require the President to continue to use in the training of Government personnel, the work performed by this appellant, a person whose loyalty to the Government he suspects. There is no reason in the Constitution why the President should not limit the training staff to persons whose loyalty is beyond the faintest shadow of suspicion."

he passes through the gate.[12] The issue he raises is one [fol. 145] of law: whether appellee may withhold an honorable discharge from a soldier whose conduct and efficiency ratings have never been less than "excellent," even assuming the correctness of all of the information appellee relies upon. That claim being "wholly dependent upon a question of law," it is within the jurisdiction of the District Court. *United States* v. *Williams*, 278 U.S. 255, 257-58 (1929); NOTE, 70 HARV. L. REV. 533, 539-40 (1957). Nothing in *Gentila* v. *Pace, supra,* is to the contrary. Nor can I accept it as settled (either by this court or the Supreme Court) that courts may not in circumstances like these review the issuance of a less than honorable discharge. As was pointed out in *Schustack* v. *Herren*, 234 F.2d 134, 135 n. 1 (2d Cir. 1956), "The Supreme Court has not yet spoken on the question of 'whether and to what extent the courts have power to review or control the War Department's action in fixing the type of discharge certificates issued to soldiers [footnote omitted] . . . .' Patterson v. Lamb, 329 U.S. 539, 542, 67 S.Ct. 448, 449, 91 L.Ed. 485." In the footnote, the Supreme Court referred, among other authorities, to the decision of this court in *Denby* v. *Berry*, 51 App.D.C. 335, 279 Fed. 317 (1922), *reversed on other grounds*, 263 U.S. 29 (1923). In that case we held "void and without authority of law" what we thought to be a discharge which did not comport with statutory procedure.[13] See also *Davis* v. *Woodring*, 72 U.S.App.D.C. 83, 85, 111 F.2d 523, 525 (1940).

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[12] Even in the case of a civilian Government employee who sought the position he holds, rather than being drafted, although we said that "mere dismissal" is not punishment and that there is no redress for injury suffered "in the process of dismissal," we recognized no authority to inflict gratuitous injury over and above the dismissal. *Bailey* v. *Richardson, supra* note 10, 86 U.S.App.D.C. at 257-58, 265, 182 F.2d at 55-56, 63.

[13] Our decision was reversed by the Supreme Court upon the ground that what we considered a discharge was actually merely a transfer from active to inactive status, something wholly within the discretion of the commander-in-chief.

That appellant seeks, in addition to a declaration that the discharge given him was void, an order that he be given an honorable discharge does not, in my view, deprive the District Court of jurisdiction. If, upon review, [fol. 146] the discharge given appellant is declared to be void, we must assume that the Secretary would issue a discharge which is not void. *Denby* v. *Berry, supra.* Moreover, if the District Court finds the denial of an honorable discharge to rest on legally insufficient grounds, it may, at least, enjoin a denial for such reasons. *Perkins* v. *Elg*, 307 U.S. 325, 349-50 (1939); *Shachtman* v. *Dulles*, 96 U.S.App.D.C. 287, 294, 225 F.2d 938, 940 (1955).

Both parties request that we decide the merits of this controversy—namely, whether the Universal Military Training and Service Act of 1948, 62 STAT. 606, 50 U.S.C. App. § 454(b),[14] pursuant to which Directive 5210.9 was promulgated, authorizes issuance of less than an "honorable discharge" certificate, in the circumstances of this case. But I think that since the District Court never reached consideration of the merits, sound judicial practice requires that it should first have that opportunity.

[14] The statute sets the draftee's term of service at two years, "unless sooner released, transferred, or discharged in accordance with procedures prescribed by the Secretary of Defense . . ."

[fol. 147] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

January Term, 1957.

C. A. 1972-55

No. 13,230

JOHN H. HARMON, III, Appellant,

v.

WILBER M. BRUCKER, Individually and as Secretary of the Department of the Army, Appellee.

Appeal from the United States District Court for the District of Columbia.

Before: Prettyman, Bazelon and Danaher, Circuit Judges.

JUDGMENT—Jan. 31, 1957

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: January 31, 1957.

Per Circuit Judge Prettyman.

Separate dissenting opinion by Circuit Judge Bazelon.

[fol. 148] DESIGNATION OF RECORD (omitted in printing)

[fol. 150] Clerk's Certificate to Foregoing Transcript (omitted in printing)

[fol. 151] Supreme Court of the United States

[Title omitted]

Order Allowing Certiorari—May 13, 1957

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT. U S

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 141

HOWARD D. ABRAMOWITZ, PETITIONER,

vs.

WILBUR M. BRUCKER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED MAY 27, 1957
CERTIORARI GRANTED JUNE 17, 1957

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,587

HOWARD D. ABRAMOWITZ, *Appellant*

v.

WILBUR M. BRUCKER, Secretary of the Department of the Army, *Appellee*

Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

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1 Filed May 21, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2140-'56

HOWARD D. ABRAMOWITZ, 334 East 92nd Street, Brooklyn 10, New York, *Plaintiff*,

v.

WILBER M. BRUCKER, Secretary of the Department of the Army, Washington 25, D. C., *Defendant*.

Complaint for Declaratory Judgment and Injunctive Relief

Plaintiff, complaining of the defendant, by his attorneys, respectfully alleges:

1. The Court has jurisdiction of this action under D. C. Code Sections 11-305 and 11-306, under Section 10 of the Administrative Procedure Act, 5 U. S. C. 1009, and under 28 U. S. C., 1331 and 2201.

2. The defendant is the Secretary of the Department of the Army of the United States and is sued herein in that capacity.

3. Plaintiff is a citizen of the United States and is a resident of Brooklyn, New York.

4. On October 15, 1951 plaintiff was duly inducted into the Armed Forces of the United States Army, under and pursuant to the provisions of the Universal Military Training and Service Act of 1948, 50 App. U. S. C. 451 et seq.

5. On June 30, 1953, the plaintiff, having honorably completed his active military service, received a certificate

of honorable separation from the active military forces and was, pursuant to the aforementioned Act, duly transferred to the Enlisted Reserve.

2 6. On July 15, 1955, plaintiff received a communication from the Department of the Army, Office of the Adjutant General, copy of which is annexed hereto as Exhibit A. Enclosed therewith was a document entitled "Summary of Information", a copy of which is annexed hereto as Exhibit B.

7. Thereafter and on August 22, 1955, plaintiff pursuant to the applicable rules and in accordance with permission granted to him in paragraph 2(b) of Exhibit A, submitted a letter of rebuttal, a copy of which is annexed hereto as Exhibit C.

8. Thereafter and on or about September 13, 1955 plaintiff received an undesirable discharge from the Armed Forces of the United States. A copy of his discharge certificate is annexed hereto as Exhibit D.

9. Thereafter and on or about October 19, 1955 plaintiff filed with the Army Discharge Review Board an application for review of his said discharge. On May 9, 1956, plaintiff received from the Department of the Army a letter denying his request for a change in type of discharge. A copy of that letter is annexed as Exhibit E.

10. The allegations in the aforesaid letter dated July 15, 1955, Exhibit A hereto, relate solely to the lawful activities and associations of plaintiff prior to the time of his induction into the Armed Forces of the United States, during a period of time when the defendant had no jurisdiction or control over him.

11. The action of the defendant in ordering the plaintiff discharged from the Army of the United States with a

discharge less than honorable and plaintiff's discharge from the Army with an undesirable discharge was arbitrary and capricious, in violation of the statutes of the United States and further in violation of the First and Fifth Amendments to the Constitution of the United States, in that said discharge deprived plaintiff of his rights of free speech and assembly under the Constitution and deprived him of liberty and property without due process of law.

12. By reason of the said undesirable discharge, plaintiff has been and will continue to be deprived of substantial monetary benefits and rights as a veteran under both Federal and State legislation and plaintiff has encountered and will continue to encounter substantial prejudice in civilian life where the type of service rendered in the Armed Forces of the United States, or the character of discharge received therefrom, has any bearing.

13. The character and efficiency of plaintiff's active service in the Army of the United States and of his service in the enlisted reserves was such as would entitle him to an Honorable Discharge.

14. Plaintiff has exhausted all of the administrative remedies he is required to exhaust and has no adequate remedy at law.

WHEREFORE, plaintiff prays the following:

1. That the action of the defendant in discharging plaintiff from the enlisted reserves of the United States with an undesirable discharge on September 13, 1955 be declared null and void;

2. That the defendant be directed to rescind plaintiff's undesirable discharge and change his discharge to an Honorable Discharge as of September 13, 1955, and for

such other and further relief as to this Court may seem just and proper in the premises.

/s/ VICTOR RABINOWITZ
Victor Rabinowitz
RABINOWITZ & BOUDIN
25 Board Street
New York 4, N.Y.

/s/ DAVID REIN
David Rein
FORER & REIN
711 Fourteenth Street, N.W.
Washington, D. C.
Attorneys for Plaintiff.

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4 Filed May 21, 1956

EXHIBIT A

FOR OFFICIAL USE ONLY

DEPARTMENT OF THE ARMY
OFFICE OF THE ADJUTANT GENERAL
WASHINGTON 25, D. C.

15 July 1955

In Reply Refer to
AGPR-F 201 Abramowitz, Howard D.
ER 51 137 600 (15 Jul 55)

Subject: Allegations

Thru: Commanding General, First Army

To: Pfc Howard D. Abramowitz, ER 51 137 600
603 Willims Avenue
Brooklyn, New York

1. Information has been received in this office which furnishes reason to believe that your retention in the Army Establishment may not be clearly consistent with the